



NAVAL POSTGRADUATE SCHOOL

MONTEREY, CALIFORNIA

THESIS

**THE MONTREUX CONVENTION REGARDING THE
TURKISH STRAITS AND ITS IMPORTANCE AFTER THE
SOUTH OSSETIA WAR**

by

Bulent Gokcicek

March 2009

Thesis Advisor:
Second Reader:

James A. Russell
Erik J. Dahl

Approved for public release; distribution is unlimited

THIS PAGE INTENTIONALLY LEFT BLANK

REPORT DOCUMENTATION PAGE			<i>Form Approved OMB No. 0704-0188</i>	
Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0188) Washington DC 20503.				
1. AGENCY USE ONLY (Leave blank)		2. REPORT DATE March 2008	3. REPORT TYPE AND DATES COVERED Master's Thesis	
4. TITLE AND SUBTITLE The Montreux Convention Regarding the Turkish Straits and Its Importance after The South Ossetia War			5. FUNDING NUMBERS	
6. AUTHOR(S) Bulent Gokcicek				
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Naval Postgraduate School Monterey, CA 93943-5000			8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING /MONITORING AGENCY NAME(S) AND ADDRESS(ES) N/A			10. SPONSORING/MONITORING AGENCY REPORT NUMBER	
11. SUPPLEMENTARY NOTES The views expressed in this thesis are those of the author and do not reflect the official policy or position of the Department of Defense or the U.S. Government.				
12a. DISTRIBUTION / AVAILABILITY STATEMENT Approved for public release; distribution is unlimited			12b. DISTRIBUTION CODE	
13. ABSTRACT (maximum 200 words) <p>The Turkish Straits include the Çanakkale (Dardanelles) and Istanbul (Bosporus) Straits and the Marmara (Marmora) Sea between them. The Turkish Straits are the only waterways connecting the Black Sea to the Aegean and Mediterranean Seas and to the oceans through the Suez Canal and the Straits of Gibraltar. Regulation of passage through the Turkish Straits has caused many problems throughout history.</p> <p>Since 1936, passage through the Turkish Straits has been governed by the Montreux Convention. Following the South Ossetia War in August 2008, the Turkish Straits again became problematic when Turkey denied passage to U.S. warships seeing to transit the Straits.</p> <p>This thesis analyzes three key research questions surrounding use of the Straits: Can the Montreux Convention satisfy current requirements? Should the Montreux Convention be revised? If modifications in the Montreux Convention are necessary, what modifications are appropriate and how might they affect stability in the Black Sea?</p>				
14. SUBJECT TERMS The Turkish Straits, Istanbul Strait, Canakkale Strait, The Montreux Convention, Passage Regime in the Turkish Straits			15. NUMBER OF PAGES 95	
			16. PRICE CODE	
17. SECURITY CLASSIFICATION OF REPORT Unclassified	18. SECURITY CLASSIFICATION OF THIS PAGE Unclassified	19. SECURITY CLASSIFICATION OF ABSTRACT Unclassified	20. LIMITATION OF ABSTRACT UU	

NSN 7540-01-280-5500

Standard Form 298 (Rev. 8-98)
Prescribed by ANSI Std. Z39.18

THIS PAGE INTENTIONALLY LEFT BLANK

Approved for public release; distribution is unlimited

**THE MONTREUX CONVENTION REGARDING THE TURKISH STRAITS AND
ITS IMPORTANCE AFTER THE SOUTH OSSETIA WAR**

Bulent Gokcicek
Captain, Turkish Army Forces
B.S., Turkish Army Forces Academy, 1996

Submitted in partial fulfillment of the
requirements for the degree of

**MASTER OF ARTS IN SECURITY STUDIES
(CIVIL-MILITARY)**

from the

**NAVAL POSTGRADUATE SCHOOL
March 2009**

Author: Bulent Gokcicek

Approved by: Professor James A. Russell
Thesis Advisor

Assistant Professor Erik J. Dahl
Second Reader

Harold A. Trinkunas, PhD
Chairman, Department of National Security Affairs

THIS PAGE INTENTIONALLY LEFT BLANK

ABSTRACT

The Turkish Straits include the Çanakkale (Dardanelles) and Istanbul (Bosporus) Straits and the Marmara (Marmora) Sea between them. The Turkish Straits are the only waterways connecting the Black Sea to the Aegean and Mediterranean Seas and to the oceans through the Suez Canal and the Straits of Gibraltar. Regulation of passage through the Turkish Straits has caused many problems throughout history.

Since 1936, passage through the Turkish Straits has been governed by the Montreux Convention. Following the South Ossetia War in August 2008, the Turkish Straits again became problematic when Turkey denied passage to U.S. warships seeking to transit the Straits.

This thesis analyzes three key research questions surrounding use of the Straits: Can the Montreux Convention satisfy current requirements? Should the Montreux Convention be revised? If modifications in the Montreux Convention are necessary, what modifications are appropriate, and how might they affect stability in the Black Sea?

THIS PAGE INTENTIONALLY LEFT BLANK

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
A.	MAJOR RESEARCH QUESTION.....	1
B.	IMPORTANCE	4
C.	PROBLEMS AND HYPOTHESES.....	5
D.	LITERATURE REVIEW.....	6
	1. <i>Mare Liberum</i>	6
	2. International Straits and the Turkish Straits	8
	3. The Straits Question.....	15
	4. Russia and the Turkish Straits	16
	a. <i>Seventeenth and Eighteenth Centuries</i>	16
	b. <i>Nineteenth Century</i>	17
	c. <i>Twentieth Century</i>	19
	5. The United States and the Turkish Straits.....	21
	a. <i>The General Policy of the United States Regarding</i> <i>International Waters</i>	21
	b. <i>United States Policy Prior to World War I</i>	22
	c. <i>United States Policy from World War I to World</i> <i>War II</i>	24
	d. <i>United States Policy since the Outbreak of World</i> <i>War II</i>	26
E.	METHODOLOGY AND SOURCES.....	28
F.	THESIS OVERVIEW	28
II.	THE HISTORICAL BACKGROUND OF THE TURKISH STRAITS.....	29
A.	INTRODUCTION.....	29
B.	THE ERA OF TURKISH DOMINATION (1453-1809)	30
C.	THE BILATERAL AGREEMENTS ERA (1809-1841).....	31
D.	THE MULTILATERAL AGREEMENTS ERA (1841- 2009)	33
III.	THE MONTREUX CONVENTION REGARDING THE REGIME OF THE TURKISH STRAITS.....	35
A.	INTRODUCTION.....	35
B.	MERCHANT VESSELS	37
	1. In Time of Peace	37
	2. In Time of War, Turkey not being Belligerent.....	38
	3. In Time of War, Turkey being Belligerent	38
	4. Situation in which Turkey Considers Itself Threatened with Imminent Danger of War	38
C.	VESSELS OF WAR	38
	1. In Time of Peace	39
	a. <i>Limitation Regarding Passage through the</i> <i>Turkish Straits</i>	39
	b. <i>Limitation in Respect of the Black Sea</i>	40

2.	In Time of War, Turkey not Being Belligerent	42
a.	<i>Fulfillment of Rights and Obligations Arising from the Covenant of the League of Nations.....</i>	43
b.	<i>Passage by Warships of any Combatant State which is a Party to Mutual Assistance Covenant Binding Turkey.....</i>	44
3.	In Time of War, Turkey Being Belligerent.....	44
4.	Situation in which Turkey Considers Itself Threatened with Imminent Danger of War	45
D.	AIRCRAFT	46
IV.	RECENT DEVELOPMENTS REGARDING THE TURKISH STRAITS AFTER THE SOUTH OSSETIA WAR	47
A.	THE SOUTH OSSETIA WAR	47
B.	THE AFTERMATH OF THE SOUTH OSSETIA WAR AND THE CURRENT SITUATION.....	47
V.	POSSIBLE PROPOSALS FOR MODIFYING THE MONTREUX CONVENTION	51
A.	CHANGES LIKELY TO OCCUR IN THE LEGAL STATUS OF THE TURKISH STRAITS	51
B.	REPLACING THE MONTREUX CONVENTION WITH A NEW AGREEMENT	52
C.	ABOLITION OF THE MONTREUX CONVENTION WITHOUT CONCLUDING A NEW AGREEMENT	56
D.	MODIFYING CERTAIN ARTICLES OF THE MONTREUX CONVENTION	58
1.	General Composition of the Convention	60
2.	Merchant Vessels	60
3.	Vessels of War	62
a.	<i>Limitation Regarding Passage through the Turkish Straits.....</i>	62
b.	<i>Limitation in Respect of the Black Sea</i>	63
4.	Articles Regarding the League of Nations.....	64
5.	Aircraft.....	64
VI.	CONCLUSION	65
A.	A GENERAL EVALUATION OF POSSIBLE MODIFICATIONS TO THE MONTREUX CONVENTION.....	65
B.	ADVANTAGES AND DISADVANTAGES FOR TURKEY	65
C.	ADVANTAGES AND DISADVANTAGES FOR THE UNITED STATES	66
D.	ADVANTAGES AND DISADVANTAGES FOR RUSSIA.....	67
E.	ADVANTAGES AND DISADVANTAGES FOR BLACK SEA COUNTRIES	68
F.	CONCLUSION	69
	LIST OF REFERENCES.....	73

INITIAL DISTRIBUTION LIST	77
---------------------------------	----

THIS PAGE INTENTIONALLY LEFT BLANK

LIST OF FIGURES

Figure 1.	Turkish Straits System.....	3
Figure 2.	Planned Pipeline Route to Bypass the Turkish Straits.....	56
Figure 3.	The Black Sea Countries.....	59

THIS PAGE INTENTIONALLY LEFT BLANK

LIST OF TABLES

Table 1.	Historical Timeline Regarding the Turkish Straits	30
Table 2.	Discrimination of the Montreux Convention Articles	36
Table 3.	Vessel Traffic in the Turkish Straits	53
Table 4.	Tanker Traffic in the Turkish Straits.....	54
Table 5.	Maritime Incidents and Casualties in the Turkish Straits	55
Table 6.	Passages with Pilot through the Turkish Straits	62

THIS PAGE INTENTIONALLY LEFT BLANK

ACKNOWLEDGMENTS

First and foremost, I would like to thank and express my gratitude to my wife, Yasemin, for providing me with her support and understanding, which helped me to focus on this thesis.

I would like to thank and acknowledge Professor James Russell and Asst. Professor Erik J. Dahl for their guidance and instruction on this thesis.

Also, my gratitude is extended to all of my professors while aboard NPS. I wish to thank my professors in the Department of National Security Affairs who mentored me and expanded my thinking.

Finally, but most importantly, I would like to thank the Turkish Armed Forces and the Republic of Turkey for providing this precious opportunity for postgraduate study.

THIS PAGE INTENTIONALLY LEFT BLANK

I. INTRODUCTION

A. MAJOR RESEARCH QUESTION

A strait is a narrow, navigable waterway. As Bing Bing Jia says,

Geography has offered a definition, namely, "a narrow stretch of sea connecting two extensive areas of sea." ... However, the expression, "two large bodies of water" may be seen by lawyers as having specific implications, involving the division between internal waters, the territorial sea, and the high seas, which concepts are distinctive in law.¹

As a geographical category, according to Moore, a strait connects extensive areas of the sea and is a narrow stretch of sea.² Bruel, in his classic text on international straits, offers four characteristics of a strait.³ To be a strait in the geographical sense, the water must be a part of the sea. Second, it must have a limited width. Narrowness is an important factor for the international legal definition because legally, an international strait is a geographical strait through which a high sea corridor does not exist. If a strait is wider than double the extent of the territorial sea, it is considered a corridor of the high seas. Nihan Unlu notes that such a corridor falls outside the legal concept of an international strait, although geographically it serves as a strait through which all ships and aircraft enjoy freedom of navigation and over flight.⁴ Third, a strait must separate two land masses, whether two continents, or one continent and an island or two. Finally, a strait must connect two areas of sea.

¹ Bing Bing Jia, *The Regime of Straits in International Law* (Oxford: Oxford University Press, 1998), 3.

² Wilfred George Moore, *A Dictionary of Geography* (London: Penguin Press, 1975), 221-222.

³ Erik Bruel, "The General Legal Position of International Straits," *International Straits, A Treatise on International Law, Vol. I.*, at <http://www.jstor.org.libproxy.nps.edu/stable/pdfplus/3016974.pdf> accessed February 2009.

⁴ Nihan Unlu, *The Legal Regime of the Turkish Straits* (The Hague: Martinus Nijhoff Press, 2002), 17.

According to Nihan Unlu, the 1982 United Nations Convention on the Law of the Sea (UNCLOS) fails to adequately address the legal status of straits. The UNCLOS describes only the type of regime that should be applied to international straits, without describing a strait used for international navigation. The relevant articles are Articles 36, 37 and 45.⁵

Article 36: This Part does not apply to a strait used for international navigation if there exists through the strait a route through the high seas or through an exclusive economic zone of similar convenience with respect to navigational and hydrographical characteristics, in such routes, the other relevant parts of this convention, including the provisions regarding the freedoms of navigation and over flight, apply.

Article 37: This section applies to straits, which are used for international navigation between one part of the high seas or an exclusive economic zone and another part of the high sea or an exclusive economic zone.

Article 45: The regime of innocent passage, in accordance with Part II, Section 3, shall apply in straits used for international navigation: b) between a part of the high seas or an exclusive economic zone and the territorial sea of a foreign State.

Given these articles, Unlu says,

[T]he Turkish Straits could therefore be considered geographically as straits used for international navigation. First, they are narrow, because there is not any high sea corridor through the straits; second, they connect two high seas to each other, the Black Sea to the Mediterranean.⁶

⁵ United Nations Convention on the Law of the Sea of 10 December 1982, at http://www.un.org/Depts/los/convention_agreements/convention_overview_convention.htm accessed February 2009.

⁶ Unlu, 18.

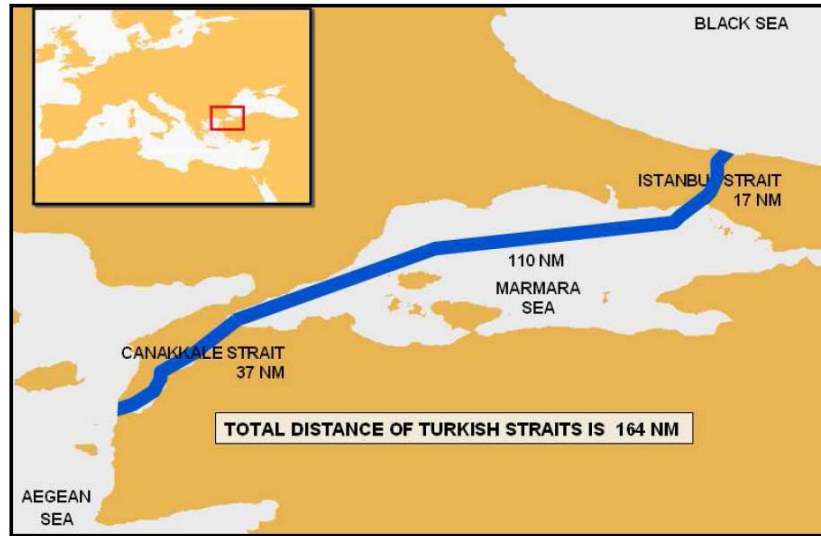


Figure 1. Turkish Straits System⁷

The Turkish Straits include the Çanakkale (Dardanelles) Strait, the Istanbul (Bosporus) Strait and the Marmara (Marmora) Sea between them.⁸ The 164-mile waterway encompassing these straits is called the Turkish Straits system. (Figure 1) The Turkish Straits are the only waterways connecting the Black Sea to the Aegean and Mediterranean Seas and to the oceans through the Suez Canal and the Straits of Gibraltar. The Turkish Straits are also the boundary between the continents of Europe and Asia.

Regulation of passage through the Turkish Straits has caused many problems throughout history. Since 1936, the Montreux Convention has governed passage through the Turkish Straits. Following the South Ossetia War in August 2008, the Turkish Straits became problematic when Turkey denied some U.S. warships passage through the straits. This thesis analyzes three research questions surrounding the administration of the straits:

⁷ Source: Turkish Straits Vessel Traffic Service (TSVTS) Official Webpage, at http://www.afcan.org/dossiers_techniques/tsvts_gb.html accessed March 2009.

⁸ In this thesis, the names for waterways and seas are used as appropriate for the historical period under discussion. Bosporus, Dardanelles and Marmora are used in discussions of the historical context, and the current names are used in discussing the contemporary period.

Can the Montreux Convention satisfy current requirements?⁹ Should the Montreux Convention be revised? If modifications in the Montreux Convention are necessary, what modifications are appropriate and how might they affect stability in the Black Sea?

B. IMPORTANCE

As noted Cemil Bilsel, “The Turkish Straits are politically, economically and strategically important, and this importance is the outcome of their geographical situation which in turn gives rise to political interests.”¹⁰ The geographical situation makes the Turkish Straits especially important for countries bordering the Black Sea.

After the Turkish Independence War in 1923, passage through the Turkish Straits was regulated by the Lausanne Agreement, which restricted Turkey's sovereignty on the straits. Turkey reasserted control over the straits when it signed the Montreux Agreement signed on July 20. The Turkish Straits were a very sensitive area for possible attacks early in World War II.¹¹

Global powers have competed for influence over the Turkish Straits and the Black Sea for more than three centuries. Although various solutions were found for controlling the Turkish Straits, none could satisfy every side.¹²

⁹ Many scholars such as Rozakis and Unlu accept that many rules and definitions of the Montreux Convention, signed in 1936, do not fit all the specialties of today such as weapon systems or the classification of warships and they claim that the Montreux Convention is particularly in regard the need to update naval vessel classifications and to substitute the authority of the United Nations for the League of Nations.

¹⁰ Cemil Bilsel, “The Turkish Straits in the Light of Recent Turkish-Soviet Russian Correspondence,” *The American Journal of International Law*, Vol. 41, No. 4 (Oct. 1947), 731, at <http://www.jstor.org/stable/2193087> accessed December 2008.

¹¹ Christos L. Rozakis and Petros N. Stagos, *The Turkish Straits* (Dordrecht: Martinus Nijhoff Press, 1987), 44-47.

¹² Antony R. Deluca, *Great Power Rivalry at the Turkish Straits: The Montreux Conference and Convention of 1936*, (New York: Columbia University Press, 1981), 5-8.

This remains true today. The Turkish Straits are still important, due to rapid increases in commercial transport and military activities. Recently, increased tensions in the Caucasus and Black Sea areas have focused attention again on the strategic importance of the Turkish Straits.

C. PROBLEMS AND HYPOTHESES

The Turkish Straits are not international channels; they are water channels under the rule of Turkey and open to international use. The Montreux Convention clearly states that the Turkish Straits are under the control of the Turkish Republic. The international passage regime is identified and defined by the Montreux Convention as the “harmless right of passage.”¹³ This means free cruising without causing harm. Harmless passage includes three specific elements determined by the Montreux Convention: harmless cruising, obeying formalities, and paying taxes, fees and official charges.

The Turkish Republic has operated with the agreement since 1936. Deficiencies in the agreement have emerged over the years, resulting in attempts to modify it in part or in whole.

Recent tensions in the Caucasus create new risks in the region. In light of recent developments, this thesis begins by reviewing the history and importance of the Turkish Straits and agreements regarding them.

Second, the thesis examines the Montreux Convention regarding the regime of the Turkish Straits, and explains how the Montreux Convention regulates passage through the Turkish Straits.

Finally, the thesis examines recent developments involving the Turkish Straits since the South Ossetia War. It discusses the demands of Russia, the United States and Turkey regarding the Montreux Convention and the Turkish Straits.

¹³ Ferenc A. Vali, *The Turkish Straits and NATO* (Stanford: Hoover Institution Press, 1972), 40-41.

This thesis focuses on the hypothesis that the current situation governing the Turkish Straits is the best for all sides (United States, Turkey and Russia) because since it was signed, the Montreux Convention has provided peace in the Black Sea. The thesis also examines how possible modifications to the Montreux convention might affect the current situation in the Black Sea.

D. LITERATURE REVIEW

1. *Mare Liberum*

The Latin term *mare liberum* means “free sea” or “freedom of the sea.” It refers to waters outside of national jurisdiction. The principle of *mare liberum* was proposed by Hugo Grotius in his 1609 book by the same name, today considered one of the first works of international law.¹⁴

Grotius was a jurist and philosopher in the Dutch Republic who also worked for the Dutch East India Company. At the time, there was no legislation pertaining to international waters. Grotius was the first to write about it in the predecessor to *Mare Liberum*, *De Iure Praedae Commentarius* (*The Law of Prize and Booty*) in 1604-1606.¹⁵

Grotius found the foundations for international law in natural law. In *Mare Liberum*, Grotius formulates the principle that the sea is international territory and all nations are free to use it for seafaring trade.¹⁶

Grotius argued that the sea should be free to all, and nobody has the right to prevent others from using it. He described his approach: “the Dutch have the

¹⁴ Edward N. Zalta, ed., “Hugo Grotius,” *Stanford Encyclopedia of Philosophy*, at <http://plato.stanford.edu/entries/grotius/> accessed February 2009.

¹⁵ Jeroen Vervliet, “The value of Hugo Grotius’ ‘Mare Liberum’ in today’s world,” at <http://www.mareliberum.nu/v1/index.php?mnu=2> accessed February 2009.

¹⁶ Hugo Grotius, translated by Ralph Van Deman Magoffin, *The Freedom of the Seas, or the Right Which Belongs to the Dutch to take part in the East Indian Trade* (New York: Oxford University Press, 1916), vi. at <http://oll.libertyfund.org/title/552> on 2009-03-03 accessed February 2009. This edition has a facsimile of the 1633 edition.

right to sail to the East Indies” and “to engage in trade with the people there.”¹⁷ He then described a primary rule, or first principle, namely, “Every nation is free to travel to every other nation, and to trade with it.” From this principle, Grotius argued that the right to travel and to trade requires both a right of innocent passage over land, and a similar right of innocent passage at sea.¹⁸

According to Grotius, the air belongs to this class of things for two reasons. First, it is not susceptible of occupation; and second, its common use is destined for all men. For the same reasons the sea is common to all, because it is so limitless that it cannot become anyone's possession, and because it is adapted for the use of all, whether considering navigation or fisheries.¹⁹

However, many of his colleagues did not accept these ideas. The Scottish jurist William Welwod argued against *mare liberum* in *An Abridgement of All Sea-Laws* (1613), eliciting a response from Grotius around 1615 under the title *Defensio capituli quinti Maris Liberi oppugnati a Gulielmo Welwodo* (*Defense of the five free oceans, opposed by William Welwod*).²⁰ John Selden, in his book *Mare Clausum* (1635), claimed that “the sea was in practice virtually as capable of appropriation as terrestrial territory.”²¹

England, in fierce competition with the Dutch to dominate world trade, opposed *mare liberum*, claiming the Dominion of the British Sea. The dispute had important economic implications. The Dutch Republic supported the idea of free trade, while England adopted the Act of Navigation (1651), forbidding goods from entering England except on English ships. The Act led to the First Anglo-Dutch War (1652-1654).²²

¹⁷ According to Vervliet, Grotius, by claiming “free seas,” provided suitable ideological justification for the Dutch to break up various trade monopolies through its formidable naval power and then establish its own monopoly.

¹⁸ Grotius, 7.

¹⁹ Grotius, 28.

²⁰ Unlu, 21.

²¹ Unlu, 22.

²² Vervliet.

As the controversy led to conflicting claims, maritime states moderated their demands and based their maritime claims on the principle that sovereignty extended seawards from land. A workable formula was found by Cornelius Bynkershoek in *De Dominio Maris* (1702), restricting maritime dominion to the cannon range that could effectively protect the land.²³ This was universally adopted and became the three-mile limit.

Today, seas are considered joint property of mankind. The *mare liberum* principle became universal and was ultimately transformed into a “freedom of the seas” rule. Indeed, freedom of navigation and transit is a form of “freedom of seas.”

2. International Straits and the Turkish Straits

According to Unlu, “The regime in straits was developed by the writings of some of the most important theorists of international law.”²⁴ Grotius was the first international law author to study the question of rights of passage through territorial waters and straits in his work *De Jure Belli ac Pacis*.²⁵ Grotius believed that states have the right of unarmed passage through straits even though those parts of the sea fall under a sovereign state's jurisdiction. He asserted that the coastal state should protect and promote navigation through straits by keeping the thoroughfares lighted and marked off and by conditioning such passage upon payment of a moderate toll.²⁶ In the same century, however, John Selden rejected this idea, claiming that “a coastal State could rightfully refuse the passage of a foreign vessel.”²⁷ The two writers' discussion shows that, in the seventeenth century, the main issue was the freedom of the seas in general.

²³ Vervliet.

²⁴ Unlu, 22.

²⁵ Unlu, 22.

²⁶ Unlu, 23.

²⁷ Unlu, 24.

In the eighteenth century, analysts began to distinguish between the territorial seas and the high seas. Cornelis Van Bynkershoek, in *De Dominio Maris* (1702), supported the idea that “a State had the right to forbid the unarmed passage in territorial waters, including straits, but the passage would in any case be made conditional upon payment of moderate dues for keeping the strait lighted.”²⁸ Unlike Bynkershoek, Emmerich de Vattel made a distinction between straits that “serve for communication between two seas and straits that have no such function.”²⁹ According to Vattel, the littoral state had no right to refuse passage in straits of the first category but dues might be required for passage. Hence, Vattel is considered the first to propose the concept of international straits.

Nineteenth-century authors went a step further, discriminating between warships’ and merchant vessels’ passage through straits. Some scholars, including Alphonse Rivier, Paul Godey and Erskine Holland, claimed freedom of passage for both types of vessel. Others, such as Pasquale Fiore and Henry Wheaton, supported free passage only of merchant vessels. According to Fiore and Wheaton, “ships could only pass through straits for commercial reasons; therefore, the littoral State could prohibit the passage of warships through straits.”³⁰ Rivier, Godey and Holland, in contrast, suggested, “[A]ll nations had the right of passage through straits provided the passage be inoffensive. In other words, States may regulate the passage of ships but not forbid the passage of them.”³¹ The focus of discussion in the nineteenth century was on passage of vessels in peacetime.

The twentieth century saw the final steps concerning straits, passage, and discrimination among vessels. Liberal interpretations of the right of passage

²⁸ Unlu, 22.

²⁹ Unlu, 22.

³⁰ Unlu, 23.

³¹ Unlu, 23

through straits were accepted. Unlu says “According to the majority of the authors (Henning Matzen, Karl Gareis, Hannis Taylor, Francis Lawrence Oppenheim), passage should be free to both merchant vessels and warships.”³²

One twentieth-century writer, Walter Schucking, emphasized the importance of the term “international strait,” pointing out “not all straits, which connect two high seas, are necessarily of interest to international law. Only those that are of practical value to international shipping should be subject to a special set of rules.”³³

The twentieth century is also when rules of law regarding seas were established. Unquestionably, the most important is the UN Convention, UNCLOS, which followed a United Nations Conference on the Law of the Sea held from 1973 through 1982. The UNCLOS defines the rights and responsibilities of nations in their use of the world's oceans, establishing guidelines for businesses, the environment, and the management of marine natural resources.

During the conference, Canada proposed to define a strait as a natural passage between land formations that lies within the territorial sea of one or more states at any point in its length. The Private Group on Straits defined it as any natural stretch of water, whatever its geographical name, which connects two parts of the high seas.³⁴ As noted above, the 1982 Law of the Sea Convention did not define straits used for international navigation from a geographical perspective.

The U.N. Law of the Sea Convention has been signed and ratified by 157 countries.³⁵ Within the framework set forth by the Convention, the law provides for the expedient passage of all vessels through designated corridors such as

³² Unlu, 23.

³³ Unlu, 23.

³⁴ Unlu, 18

³⁵ As of March 2009.

straits used for international navigation. However, the law also gives coastal states the right to adopt and enforce nondiscriminatory laws and regulations for the prevention, reduction, and control of marine pollution in ice-covered areas within the limits of the exclusive economic zone. The exclusive economic zone comprises areas of the sea, seabed, and subsoil within 200 miles of the shore.³⁶

The United Nations Law of the Seas Convention expanded territorial seas from three to twelve miles. However, the situation of straits was not explained. For instance, the Strait of Gibraltar, the only water passage between the Atlantic Ocean and the Mediterranean Sea, is only nine miles wide in some places. The waters in this strait can be defined as part of both Morocco's and Spain's territorial seas.

On this point, Mangone, an internationally known expert on admiralty law and marine policy, says,

A number of international waterways would have been subject to the coastal states, affecting more than shipping. You can't fly over waters that belong to a nation without its permission, and submarines cannot sail under its seas.³⁷

Given the importance of this question and the lack of detailed scholarly work on the world's major straits, Mangone organized and edited a series of fourteen books on the physical, economic and legal status of straits.³⁸ Two deal with the Turkish Straits: *The Turkish Straits* (1987) by C. L. Rozakis and Petros N. Stagos, and Unlu's 2002 *The Legal Regime of the Turkish Straits*.

³⁶ United Nations Convention on the Law of the Sea of 10 December 1982, at http://www.un.org/Depts/los/convention_agreements/convention_overview_convention.htm , accessed February 2009.

³⁷ Barbra Garrison, "UD Professor Completes Series on World's Straits," *University of Delaware Community Newspaper*, Vol. 17 No. 32, May 21, 1998 at <http://www.udel.edu/PR/UpDate/98/32/ud.html> accessed February 2009.

³⁸ Garrison.

The first three chapters of *The Turkish Straits*, written by Petros Stagos, refer to the political and economic dimensions; the remaining chapters, by Christos Rozakis, cover the legal aspects. Stagos notes that the status of the “Dardanelles and the Bosphorus has been the most significant aspect of the so-called Eastern Question.”³⁹ The Turkish Straits occupy a “unique geographical position” because they divide two continents, Europe and Asia, and unite two seas, the Black Sea and the Mediterranean Sea.⁴⁰

Stagos gives a deep historical examination of the Turkish Straits, emphasizing Russia's systematic efforts to secure free passage by agreements with the Ottoman Empire and political intrigues involving the great Western powers, including Britain, Austro-Hungary, Prussia, France and later the United States, Italy and Greece.

He also emphasizes the disparities in the stances taken by the great powers in different centuries. For instance, he says,

[A]t the first modern multilateral conference on the straits at Lausanne in 1922, there was the irony of the antithetical stances of Britain, which had opposed the opening of the straits to warships in the nineteenth century, now defending the principle of absolutely free navigation, and Russia, which had rejected the perennial Tsarist ambition of free naval exit into the Mediterranean, now advocating the closure of the straits to warships.⁴¹

Rozakis considers political and legal aspects of the Turkish Straits, as well as aspects of the wider seas at both ends, the Black Sea and the Aegean.

The Lausanne Convention of 1923 provided a special regime and free navigation for the Turkish Straits, demilitarized the area, established a special Straits Commission and most importantly allowed passage of foreign war vessels. According to Rozakis, this convention is a turning point. Previously only

³⁹ Rozakis and Stagos, 14.

⁴⁰ Rozakis and Stagos, 14.

⁴¹ Rozakis and Stagos, 35.

two basic rules were routinely recognized by the great powers and the Ottoman Empire, namely, freedom of passage for merchant ships and closure to warships in time of peace.⁴²

In the mid-1930s, Turkey became increasingly worried about its security position under the 1923 regime, and successfully gathered the great powers for a conference in Montreux. The conference concluded with the Montreux Convention's restoration of Turkish sovereignty over the straits. Rozakis describes the Montreux Convention as

... bearing no resemblance to the “unequal treaties” forced on States in earlier centuries because of the Straits State's beneficial treatment; and it is said to be noteworthy because for the first time in the history of the regulation of straits, freedom of navigation was proclaimed to be a principle of international law.⁴³

After a detailed examination of the Montreux Convention, he says,

The obsolescence of the Montreux Convention and its inability to meet contemporary requirements is obvious. Not only are the rules that concern the quantitative and qualitative criteria of warships out of date, but the safe transit of merchant ships through the straits and the avoidance of pollution of the area were never addressed in the convention.⁴⁴

Rozakis concludes, “if the Montreux Convention is not adapted to current conditions by a revision, sooner or later it will either become a dead letter or merely comprise a few weak directives.”⁴⁵

The second book on the Turkish Straits from the International Straits of the World series is Nihan Ünü's *The Legal Regime of the Turkish Straits*.⁴⁶ Ünü begins with the legal status of the Turkish Straits.

⁴² Rozakis and Stagos, 87.

⁴³ Rozakis and Stagos, 80.

⁴⁴ Rozakis and Stagos, 136.

⁴⁵ Rozakis and Stagos, 138.

⁴⁶ Ünü.

To understand the legal status of the Turkish Straits, it is important to find out whether they are straits used for international navigation. If straits are not “international,” no legal dispute arises over the relation between the right of passage and coastal jurisdiction.⁴⁷

Upon investigation, she concludes, “The best way to describe the status of water in the Turkish Straits is to consider them as territorial waters,” while noting, “[I]t does not really matter whether the Turkey describes the waters of the straits as territorial waters, because the straits are regulated by the Montreux Convention.”⁴⁸ Hence, because of the application of the Montreux Convention’s provision, the Turkish Straits cannot be regulated by the internal water regime or any new regime provided by Turkey.

Unlu also explores the possibility of making the straits a particularly sensitive sea area, allowing the coastal state to take expanded jurisdiction to prevent marine pollution. In concluding her study, Unlu raises key international policy questions:

[S]hould the 1936 Montreux Convention be amended or denounced—or changed by some unilateral act of Turkey? Can the convention be sustained as it is, modified by unilateral action, denounced by the parties, or its provisions changed in some other way by international action?⁴⁹

Unlike Rozakis, Unlu claims that “Neither Turkey nor the signatory powers seem to have any interest in revising the Montreux Convention at present”⁵⁰ and concludes, “Any change could cause unwanted results. None of the states appear to be thinking of changing the convention.”⁵¹ She clearly does not support denunciation of the Montreux Convention, suggesting that

⁴⁷ Unlu, 16.

⁴⁸ Unlu, 17.

⁴⁹ Unlu, 109-113.

⁵⁰ Unlu, 112.

⁵¹ Unlu, 113.

Turkey should ... fill any gaps in the convention by applying national rules that are consistent with contemporary international law but not to the extent that it would cause a denunciation of the Montreux Convention itself.⁵²

3. The Straits Question

“The Straits question,” “the question of Straits” and “the problem of Straits” all refer international disputes over restrictions on the passage of warships through the Bosphorus, the Sea of Marmora, and the Dardanelles, the strategic straits connecting the Black Sea with the Aegean and Mediterranean seas. The historical core of this question is Russian naval access to the Mediterranean from the Black Sea via the Turkish Straits in the 19th and 20th centuries.

According to scholars such as Shotwell, the Straits question existed during the ancient, medieval, and modern historical periods. He says the problem of the Straits is “one of the oldest and most persistent problems in European history.” Whether the West realizes it or not,

[T]o at least half of Europe there is no other single international problem of greater importance than the control of the few short miles of waterway that connects the Black Sea with the Mediterranean, those narrow Straits which separate Europe from Asia.⁵³

It is true that the Turkish Straits have always had strategic importance in history. However, the term “Straits question” in discussions between Turkish and European diplomats only appears with the decline of the Ottoman Empire. In fact, for three centuries, from the conquest of Constantinople in 1453 to the Kucuk

⁵² Unlu, 114.

⁵³ James T. Shotwell and Francis Deak, *Turkey at the Straits: A Short History*, (New York: Hesperides Press, 2006 reprint edition), 28.

Kaynarca Agreement in 1774, the Black Sea was a Turkish lake, the problem of the Straits did not exist, and the Ottoman Empire established the rule excluding all foreign ships from the Black Sea.⁵⁴

The Treaty of Kucuk Kaynarca put an end to the Russia-Turkish War and forced Turkey to recognize the independence of the Crimea. The Crimea then became a Russian protectorate and within a few years was annexed to Russia. Russia thereby established itself as a major Black Sea power.⁵⁵

As a result of Article XI of the Treaty of Kucuk Kaynarca, the Black Sea was opened to trade and Russia obtained the right of free passage through the Straits for its merchant vessels.⁵⁶ Thus, the year 1774 can be considered the beginning of the "question of the Straits."

Esmer writes, "The question of the Straits has been the basis of Turkey's relations with the Powers for almost two centuries."⁵⁷ The Straits question has persisted in a variety of ways described in Chapter II of this thesis.

4. Russia and the Turkish Straits

Unlu classifies Russian policy regarding the Turkish Straits into three periods: the seventeenth through eighteenth centuries, the nineteenth century, and the twentieth century.⁵⁸

a. Seventeenth and Eighteenth Centuries

During the seventeenth century, the Ottoman Empire controlled the northern shores of the Black Sea, the Bosphorus and the Dardanelles, preventing Russian access to the high seas. Since the Black Sea was a Turkish lake and

⁵⁴ Ahmed Sukru Esmer, "The Straits: Crux of World Politics," *Foreign Affairs*, Vol. 25, No. 2 (Jan. 1947), 290, at <http://www.jstor.org/stable/20030040> accessed February 2009.

⁵⁵ Esmer, 292.

⁵⁶ Esmer, 294.

⁵⁷ Esmer, 290.

⁵⁸ Unlu, 10-16.

the Baltic Sea was almost useless for many months each year, Tsarist Russia had no a free outlet to warm seas.⁵⁹ This unfavorable situation for Russia led to a series of Russian-Turkish wars that continued until the Turks were completely defeated south of the Danube River.⁶⁰

The 1774 treaty of Kucuk Kaynarca recognizing Russia as a Black Sea power and giving Russian merchant vessels the privilege of passing through the straits was the most important agreement in the area. However, it did not satisfy Russia and led, in 1789, to renewed wars against Turkey. This time, Russia's insatiability provoked intervention by other powers, including England and Prussia. The treaty of Jassy in 1792 reconfirmed the Russian passage rights outlined in the Kucuk Kaynarca Treaty.⁶¹ England's interest in the Turkish Straits began with this treaty.⁶²

b. Nineteenth Century

The 1800s saw the decline of the Ottoman Empire. The Greeks revolted first, in 1821, with Russian help. After the Ottoman Empire's defeat, the Treaty of Adrianople (1829) was signed. Turkey not only recognized the independence of Greece but also gave Russian commercial vessels freedom to travel without being searched in all Turkish waters.⁶³

Russia gained a commercial outlet to the high seas, but from a military standpoint, the straits remained a point of weakness. Free access through the straits would allow naval powers to attack Russia's southern shores. For this reason, passage through the straits was a major issue for Russia.⁶⁴

⁵⁹ Rozakis and Stagos, 16.

⁶⁰ Unlu, 10.

⁶¹ Unlu, 10.

⁶² Esmer, 291.

⁶³ Esmer, 292.

⁶⁴ Unlu, 10-11.

After gaining free navigation for its commercial vessels, Russia attempted to have the straits closed to all other powers. This would have protected Russia from the British naval threat and would have allowed its own fleet to attack British ships in the Mediterranean Sea.⁶⁵

A revolt helped Russia's cause. Ali Pasha, Governor of Egypt, revolted against the Ottoman Empire and invaded Syria and Anatolia. Russia's help was accepted reluctantly. A Russian force landed at Hunkar Iskelesi. After the war, Russia did not withdraw its troops from the Bosphorus until the Treaty of Hunkar Iskelesi in 1833.⁶⁶ With this treaty, Russia won all its demands regarding the Turkish Straits. According to a secret article of the treaty, the Ottomans would open the straits to Russian warships while keeping them closed to warships of other powers.⁶⁷ This was the first time the Turkish sultan abandoned the "ancient rule" of keeping the straits closed to all warships. The reaction in England and France was so strong that the Tsar realized he could not maintain the provision.

The second revolt by Ali Pasha gave another the opportunity for change. This time, it was Great Britain's turn. After the revolt was defeated with Great Britain's help, a conference was held in London in 1841 that abolished the Treaty of Hunkar Iskelesi. The straits were closed once again to foreign warships. Thanks to this convention, an "ancient rule of the Ottoman Empire" was translated into an international concern.⁶⁸

The last half of nineteenth century saw two more conventions on the straits, the 1856 Treaty of Paris and the 1871 Convention of London. The basic rule laid down in 1841 with regard to closing the straits to the passage of foreign warships remained unchanged. The regime of the straits accepted by these conventions remained in force until World War I.⁶⁹

⁶⁵ Unlu, 11

⁶⁶ Esmer, 292.

⁶⁷ Unlu, 12.

⁶⁸ Esmer, 292.

⁶⁹ Unlu, 12.

c. Twentieth Century

After the adoption of the Montreux Convention, the Soviet Union strongly desired co-sovereignty in the area to give it equal power with Turkey in the straits.⁷⁰ At the end of 1936, the Soviets proposed that the Turkish government sign a bilateral defense pact. Turkey refused the proposal, although discussions continued until Turkey decided to remain neutral in World War II.

In a surprise move, the Soviet Union abolished the twenty year old Treaty of Friendship and Neutrality between Russia and Turkey in March 1945, claiming the eastern provinces of Turkey and asking for bases on the Turkish Straits.⁷¹ The Soviets said that conditions had changed radically and that a new treaty more in conformity with the altered situation should be negotiated. They wanted to alter the regime of the Turkish Straits to secure "effective guarantees," and to annex the eastern provinces of Turkey on August 7, 1946.⁷² When the three Great Powers met in Potsdam in the summer of 1945, the Soviets had raised this question of revising the Straits Convention.

The Soviet Union put forward the following proposals:

1. The Straits should be open to merchantmen of all nations in time of peace or war.
2. The Straits should be open in all circumstances to war vessels of the Black Sea Powers.
3. Except in special cases, the passage of war vessels belonging to non-Black Sea Powers should be forbidden.
4. The power to formulate the regime of the Straits should be left to Turkey and the Black Sea Powers.
5. The Straits should be defended by the "common means" of Turkey and the Soviet Union.⁷³

⁷⁰ Unlu, 13.

⁷¹ Esmer, 297.

⁷² Esmer, 297.

⁷³ Esmer, 298-299.

The Turkish government found the first three points acceptable as a basis for discussion, these being, in fact, similar to the first three points in an American note that had been presented in 1945. The fourth and fifth points, however, were rejected. Turkey pointed out that the Montreux Conference was valid until 1956.⁷⁴

Great Britain and the United States also had a forceful reaction to Soviet demands. Both agreed with Turkey, declaring they would not allow exclusive rights for the Soviet Union. With this support, the Turkish government declared that the principle of free passage through the Straits was limited by the right of the riparian state to the security and defense of its territory.⁷⁵ Moreover, Turkey had the right to defend itself against all aggression, which is the most essential attribute of sovereignty.⁷⁶ Turkey's acceptance of a joint defense of the Straits would be the equivalent of sharing its sovereignty with a foreign power. The Soviet Union realized that it could not achieve its aim by diplomacy.⁷⁷

In the following decades, the relationship between the Soviet Union and the West deteriorated. Turkey joined the North Atlantic Treaty Organization (NATO) in 1951. Initially, the Straits was not a major consideration for either NATO or the Soviet Union because NATO was focused on preventing Soviet attacks against Europe and the Soviet Union did not have a powerful naval force.⁷⁸

It was during the 1960s that the Soviet Union began to strengthen its navy. In the Six Days War between Egypt and Israel, Soviet warships passed through the Turkish Straits. Turkey did not hinder their passage because it was in accordance with the Montreux Convention. In the latter months of 1967, Soviet

⁷⁴ Unlu, 14.

⁷⁵ Unlu, 14.

⁷⁶ Rozakis and Stagos, 129.

⁷⁷ Unlu, 14.

⁷⁸ Unlu, 15.

ships passed through the Straits with great frequency, totaling more than 124 by the end of the year and continuing at about the same rate in 1968.⁷⁹

The situation changed when the Soviet Union apparently attained strategic equality with the United States, strengthening its fleet with helicopters. In 1976, the aircraft carrier Kiev gave the Soviets the capacity to threaten the naval hegemony of the United States in the Mediterranean Sea. The Turkish Straits therefore became especially important in the 1980s to the strategic interests of both the United States and the Soviet Union.⁸⁰ The situation continued until the collapse of the Soviet Union, when the strategic importance of the Turkish Straits diminished for the Western powers.

Today, for the Russian Federation, the Turkish Straits are still strategically, economically and militarily important. For example, the oil transferred through pipelines through the port of Novorossisk to the Black Sea is shipped to the West in tankers through the Turkish Straits. However, the Turkish Straits cannot accommodate much more traffic than they already handle. Because of the transportation of oil, the Turkish Straits remain important for various financial institutions, private companies and governments, especially Georgia and Russia. Although the military importance of the Turkish Straits may have diminished, they are still vital economically.⁸¹

5. The United States and the Turkish Straits

a. The General Policy of the United States Regarding International Waters

Freedom of the seas was among U.S. President Woodrow Wilson's Fourteen Points proposed during World War I.⁸² He stressed freedom to navigate

⁷⁹ Unlu, 15.

⁸⁰ Unlu, 16.

⁸¹ Unlu, 16.

⁸² "8 January 1918: President Woodrow Wilson's Fourteen Points" at http://avalon.law.yale.edu/20th_century/wilson14.asp accessed March 2009.

the oceans and disapproved of war fought on water. As Wilson said in a speech to Congress, U.S. allies Britain and France were opposed to this point, as both were considerable naval powers. Like Wilson's other points, freedom of the seas was rejected by the German government.⁸³

Writing of those times, Harry N. Howard says, “[T]he stand taken has been almost entirely a matter of principle, for the [Turkish] Straits have never played a great role in American commerce and shipping.”⁸⁴ Howard classifies the U.S. policy regarding the Turkish Straits into three eras: Pre-World War I, from World War I to World War II, and U. S. policy since the outbreak of World War II.⁸⁵

b. United States Policy Prior to World War I

U.S.-Turkey relations in respect to the Turkish Straits begin in the early nineteenth century. The American-Turkish Treaty of May 7, 1830 gave American commercial vessels freedom of passage but made no mention of the

Second principle: “Absolute freedom of navigation upon the seas, outside territorial waters, alike in peace and in war, except as the seas may be closed in whole or in part by international action for the enforcement of international covenants.”

Twelfth principle: “...The Dardanelles should be permanently opened as a free passage to the ships and commerce of all nations under international guarantees.”

⁸³ Irwin Unger, *These United States* (New York: Prentice Hall, 2007), 561.

⁸⁴ “Only one American merchant vessel passed the Straits in 1908; in 1913 American tonnage was not even listed. In 1924 a total of 47 American ships, of 259,938 tons and representing about two per cent of all traffic, was reported. The average since then has been around 200,000 tons annually, although at times it has exceeded 400,000 tons (1930).” Howard, 59.

⁸⁵ Harry N. Howard, “The United States and the Problem of the Turkish Straits,” *Middle East Journal*, Vol. 1, No.1 (Jan. 1947): 59-72, at <http://www.jstor.org/stable/4321828> accessed December 2008.

right of passage for warships. These principles were reaffirmed in the American-Turkish Treaty of Commerce and Navigation of February 25, 1862.⁸⁶

The problem of the passage of American warships through the Turkish Straits first arose in 1858. The United States sent a light warship for legation service to Constantinople, but was obligated to withdraw because of British, French, and Russian protests.⁸⁷

At the conclusion of the Convention of London, March 13, 1871, which provided for closure of the Turkish Straits to warships, U.S. Secretary of State Hamilton Fish declared,

The United States, not having been a party to the Treaty of Paris, may have more or less reason to complain of any curtailment of their rights under the law of nations which it may have affected. No formal complaint on the subject, however, has yet been addressed to either of the parties to that instrument, though the restriction which it imposes on the right of our men-of-war to the passage of the Dardanelles and the Bosphorus is under serious consideration.

88

Two years later, Fish reasserted the American policy:

The abstract right of the Turkish Government to obstruct the navigation of the Dardanelles even to vessels of war in time of peace is a serious question. The right, however, has for a long time been claimed and has been sanctioned by treaties between Turkey and certain European states. A proper occasion may arise for us to dispute the applicability of the claim to United States men-of-war. Meanwhile it is deemed expedient to acquiesce in the exclusion.⁸⁹

⁸⁶ Howard, 60. Article VII declared: "Merchant vessels of the United States, in like manner as vessels of the most favored nations, shall have liberty to pass the canal of the Imperial Residence, and go and come in the Black Sea, either laden or in ballast; and they may be laden with the produce, manufactures and effects, of the Ottoman Empire, excepting such as are prohibited, as well as of their own country." See D. H. Miller, *Treaties and Other International Acts of the United States of America* (Washington: U. S. Government Printing Office, 1933): 541-98; W. M. Malloy, *Treaties, Conventions, International Acts, Protocols and Agreements between the United States of America and Other Powers, 1776-1909* (Washington: U. S. Government Printing Office, 1910): 1321-28.

⁸⁷ Howard, 60.

⁸⁸ Howard, 61.

⁸⁹ Howard, 62.

During this period, many American requests for warships to enter the Straits were denied because the United States was not a party to the 1856 Treaty of Paris, which gave signatories the right to have war vessels permanently stationed at Constantinople to serve their legations.⁹⁰

c. *United States Policy from World War I to World War II*

The problem of the Straits became a significant point of American policy with the entry of the United States into World War I. At a conference held at the White House on April 30, 1917, President Wilson, Arthur James Balfour, and Colonel E. M. House discussed the problem of the post-war internationalization of the region of Constantinople and the Straits.⁹¹

In his Fourteen Points early the next year, President Wilson declared, "the Dardanelles should be permanently opened as a free passage to the ships and commerce of all nations under international guarantees."⁹²

In a July 31, 1918 draft memorandum based on Wilson's twelfth point, David Hunter Miller pointed to three elements of the Turkish problem. The first is to secure sovereignty for the Turkish portions of the Ottoman Empire; the second, to assure security of life and opportunity for the non-Turkish portions of the Empire; and the third, to guarantee free passage of the Straits for ships of commerce of all nations under international guarantees.⁹³

Miller continued,

If international guarantees of freedom of the Straits are to be effective, international control of those waters is essential and further, international control of the adjacent shores. If Turkish sovereignty in any form, nominal, or otherwise, is to continue over these waters and lands, or any part of them, it will necessarily be limited by and subject to such international control. That such international control may be effective and workable has been

⁹⁰ Howard, 62.

⁹¹ Howard, 63.

⁹² Howard, 63.

⁹³ Howard, 63.

shown by the history of the Danube Commission, an institution whose constitution and functions may well serve as a basis for the foundation of international control of the Straits.⁹⁴

After World War I, in the Lausanne Conference of 1922-23, the United States was not officially represented but American demands were read.

It is of distinct interest to this Government . . . to obtain effective assurances that the Straits would be open in time of peace for both merchant ships and ships of war to proceed to Constantinople and through the Black Sea. This Sea is a highway of commerce and should not be under the exclusive control of Turkey and of Russia.⁹⁵

Richard Washburn Child, head of the American delegation at the Lausanne Conference, summarized the American position concerning the Straits on December 6, 1923.

Our position is based upon that policy of our Government, which stands for complete and constant freedom, without special privilege, for our commerce and for the commerce of other nations. . . . We cannot accept the position that the future of commerce in the Black Sea is the exclusive affair of the States bordering upon it..⁹⁶

The United States did not sign the Lausanne Convention of the Straits, but signed a separate treaty with Turkey in August 6, 1923. According to Article X of this treaty,

The commercial vessels and aircraft and the war vessels and aircraft of the United States of America shall enjoy complete liberty of navigation and passage in the Straits of the Dardanelles, the Sea of Marmara, and the Bosphorus, on a basis of equality with similar vessels and aircraft of the most favored foreign nation upon

⁹⁴ Howard, 63.

⁹⁵ Howard, 65.

⁹⁶ Howard, 67.

conforming to the rules relative to such navigation and passage established by the Straits Convention signed at Lausanne, July 24, 1923.⁹⁷

The United States was not represented at the Montreux Conference, either. The American government, however, accepted the Montreux Convention reaffirming the principle of freedom of transit and navigation in the Turkish Straits for commercial vessels, although with some restrictions regarding war vessels. In the following years, U.S.-Turkey relations concerning the Turkish Straits continued on a satisfactory basis.

d. United States Policy since the Outbreak of World War II

At the start of World War II, President Roosevelt emphasized the significance of Turkey to the United States, declaring in late 1941 that he “found the defense of Turkey vital to the defense of the United States.”⁹⁸

At the end of the war, during the Potsdam Conference, Truman claimed that one of the persistent causes for wars in Europe during the last two centuries was “the selfish control of the waterways of Europe.” He implied that the waterways in question include the Danube and Rhine Rivers, the Kiel Canal and the Turkish Straits. Truman accordingly proposed “free and unrestricted navigation” of these waterways, with regulation of navigation by “international authorities.”⁹⁹ Following the Potsdam Conference, the United States sent a note to the Turkish Government on November 2, 1945, calling for a conference and suggesting revision of the Montreux Convention. The note included the following points:

1. The Straits to be open to the commercial vessels of all nations at all times;

⁹⁷ Howard, 67.

⁹⁸ Howard, 68.

⁹⁹ Howard, 69.

2. The Straits to be open to the transit of the warships of the Black sea Powers at all times;
3. Except for an agreed limited tonnage in time of peace, passage through the Straits to be denied to the warships of non-Black Sea Powers at all times except with the specific consent of the Black Sea Powers, or except when acting under the authority of the United Nations;
4. Certain changes to modernize the Montreux system, such as the substitution of the United Nations Organization for that of the League of Nations and the elimination of Japan as a signatory.¹⁰⁰

The Turkish government accepted the American note and said it was ready to participate in an international conference and accept any international decisions regarding the Turkish Straits provided “Turkish independence, sovereignty and territorial integrity” were not infringed.¹⁰¹

On August 7, 1946, the Soviet government sent another note to the Turkish government containing more articles unacceptable to Turkey, as described above. Actually, the first three of the Soviet principles were in general accord with the first three principles of the American note. However, the last two points, suggesting the establishment of a new regime on the Straits by the Black Sea powers and the development of a joint system of defense with Russia, were not acceptable.

After the Turkish government rejected the Soviet proposals, the United States modified its views in a note of October 9, reiterating its earlier position and emphasizing that the Potsdam Agreement contemplated only an exchange of views with Turkey as a useful preliminary to a conference of all the interested powers, including the United States.

¹⁰⁰ Howard, 70.

¹⁰¹ Howard, 71.

E. METHODOLOGY AND SOURCES

This study analyzes the role and future of the Montreux Convention and examines the importance of the Turkish Straits. It includes a review of the history of the Turkish Straits and agreements regarding them. The basic cornerstones in the relationship among the United States, Russia and Turkey, which are important in terms of understanding today's situation, are taken into account.

The potential effects of modifications in the Montreux Convention on Black Sea nations and the United States are examined in an analysis of potential advantages and drawbacks. The potential effects on Turkey are addressed in the same manner. The thesis concludes with an assessment of these potential outcomes.

This study relies upon data obtained through secondary sources such as books, articles, and reports, including some from sources not available in English. Primary sources include bilateral and multilateral agreements, official press releases and statements such as the text of the Montreux Convention and declarations of NATO, the United States, Russia and Turkey.

F. THESIS OVERVIEW

This study consists of six chapters. The introductory chapter discusses the purpose of the thesis as well as the importance of the thesis topic, and offers a literature review. The second chapter presents a review of the historical background of Turkish Straits. The third and fourth chapters examine the Montreux Convention and recent developments concerning the Turkish Straits since the South Ossetia war. The fifth chapter offers possible proposals for modifying the Montreux Convention and discusses their pros and cons for Turkey, the United States, Russia and other nations that have a Black Sea coastline. The sixth chapter offers conclusions.

II. THE HISTORICAL BACKGROUND OF THE TURKISH STRAITS

A. INTRODUCTION

The economic, military and political aspects of the Turkish Straits have always been on the global agenda, attracting the attention of the great powers, especially Russia.¹⁰² Because of its geopolitical position, the Turkish Straits continue to have strategic, economic and political importance.

Historically, various contractual arrangements and diplomatic instruments have been used to control passage through the straits. An important maritime trade route between the European and Asian continents, the Straits came under Turkish sovereignty in 1453 with the conquest of Istanbul. Both banks of the Dardanelles had been in Turkish hands before the conquest of Istanbul and Turks crossed into Europe via the Dardanelles. According to Hasan Kanbolat, after the conquest of Istanbul, the development of the Turkish Straits regime can be classified into three periods: the era of Turkish domination (1453-1809), the bilateral agreements era (1809-1841) and the multilateral agreements era (1841-2009).¹⁰³

¹⁰² Vali, 19.

¹⁰³ Hasan Kanbolat, "Montreux Straits Treaty after South Ossetia War: The history of the Turkish Straits," *Today's Zaman*, September 11, 2008, at <http://www.todayszaman.com/tz-web/yazarDetay.do?haberno=150871> accessed December 2008.

The Ottoman Empire Period (1453-1923)	The Era of Turkish Domination (1453-1809)	Conquest of Istanbul Karlofca Agreement Kucuk Kaynarca Agreement Ottoman-Russian Alliance Agreement Ottoman-Russian Alliance Agreement Ottoman-Russian Alliance Agreement Termination	1453 1699 1774 1798 1805 1807
	The Bilateral Agreements Era (1809-1841)	Kale-i Sultaniye Agreement Edirne Agreement Hunkar Iskelesi Agreement	1809 1829 1833
	The Multilateral Agreements Era (1841- 2009)	London Straits Convention Paris Convention London Straits Agreement on Black Sea Berlin Agreement Serves Draft Treaty	1841 1856 1871 1878 1920
The Republic of Turkey Period (1923 – 2009)		Lausanne Straits Convention Montreux Straits Treaty 1958 Geneva Continental Shelf Convention UNESCO 1982 UN Convention on the Laws of the Sea Geneva Declaration Directive on the Straits & Sea Traffic in Marmara Sea Directive on Turkish Straits Sea Traffic	1923 1936 1958 1974 1982 1985 1994 1998

Table 1. Historical Timeline Regarding the Turkish Straits

B. THE ERA OF TURKISH DOMINATION (1453-1809)

In this period, passage through the straits was subject to the orders given by the Ottoman Sultan. The Ottoman Empire was the only authority to determine the passage regime and restrict foreign vessels' passage through the Turkish Straits. In the course of time, the Black Sea was defined as a Turkish lake, and the Ottomans gained full domination over the straits, closing them to foreign

vessels. This general rule, strictly observed during the rise of the Ottoman state, began to lose effect with the decline of the Ottoman state in the eighteenth century.¹⁰⁴

After the Karlofca Peace Agreement in 1699, Russia began to develop a navy, changing the status quo in the Black Sea. European states also became involved in the Straits issue between the Ottoman Empire and Russia, making the Straits subject to the consent of more than one state.¹⁰⁵ Over time, the right to free passage through the Straits and to trade in Turkish ports was granted to vessels under British, French and Dutch flags. The Treaty of Kucuk Kaynarca, signed between the Ottoman Empire and Russia in 1774, gave Russia entitlements to have commercial vessels in the Black Sea, engage in trade and pass its trade vessels through the Straits.¹⁰⁶

The Straits were closed to war vessels of third states under the Ottoman-Russian alliance agreements signed in 1798 and 1805, whereas Russian warships were allowed passage. However, the 1805 agreement was terminated when a war broke out between these two countries in 1807. The passage of foreign warships without a decree by the sultan was forbidden under the agreement signed between the Ottoman state and England in 1809.¹⁰⁷

C. THE BILATERAL AGREEMENTS ERA (1809-1841)

The dominance of Ottoman Empire over the Straits continued in this period. Some states acquired free passage rights. There were no issues related to the Straits when the Ottoman Empire dominated them, the Black Sea and the Marmara Sea. When Russia began to rule the northern shores of the Black Sea, the Ottoman Empire recognized the free passage right of Russian trade vessels.

¹⁰⁴ Kanbolat.

¹⁰⁵ Kanbolat.

¹⁰⁶ Rozakis and Stagos, 20.

¹⁰⁷ Rozakis and Stagos, 27.

After Ottoman-Russia Treaties signed 1798 and 1805, the Black Sea was closed to all other countries' warships. Free passage through the Straits was granted for Russian warships and joint defense of the Straits was accepted, so if foreign warships tried to enter the Straits forcibly, the Ottoman-Russian fleet would resist together. This treaty did not last long, because of the Ottoman-Russia war in 1807.¹⁰⁸

The Straits question dates from 1774 when Russia won commercial access to the Straits, a right later extended to other powers. The waterway remained closed to warships in accordance with the "ancient rule" of the Ottoman Empire, of which England became a guarantor in 1809. The struggle for control of the Straits was primarily between Russia and England. According to Esmer, "Russia wanted them open to her warships alone, while England wished them closed to all warships and open only to commerce."¹⁰⁹

In 1829, the Edirne Treaty was signed and Russia acquired the right of passage for commercial vessels again. The Ottoman Empire also opened the Straits for commercial vessels of all states not at war with her. Under the Hunkar Iskelesi Treaty signed in 1833, in return for support given for the Egypt problem, Sultan Mahmud II favored Russia by closing the Straits to foreign warships.¹¹⁰

This agreement lasted until the London Treaty for Straits signed of 1841. This time, the Straits were closed to any warship other than Ottoman warships in peacetime. Notwithstanding this rule, Britain and France, allies of the Ottoman Empire during the Crimean War, sent their fleets through the Straits to attack Russia.¹¹¹

¹⁰⁸ Vali, 20-22.

¹⁰⁹ Esmer, 291.

¹¹⁰ Vali, 22.

¹¹¹ Vali, 23-24.

D. THE MULTILATERAL AGREEMENTS ERA (1841- 2009)

The Ottoman Empire, Austria, France, Britain, Russia and Prussia participated in the London Conference in 1841, which focused solely on the Straits. According to the treaty, the passage through the Straits was removed from Ottoman jurisdiction and the agreements signed by the Ottoman Empire. A new era, ending the tradition of bilateral agreements, began with the London Straits Convention signed on July 13, 1841. For the first time, the Turkish Straits and the Black Sea were regulated by a multilateral agreement.¹¹² An international regime was established.

After the Crimean War (1854-1856), the Black Sea was demilitarized by the Declaration of Paris, signed in 1856 by the Ottoman state, Russia, Great Britain, France, Sardinia, Austria and Prussia. The agreement forbade the passage of military vessels of all states, including the Ottoman Empire.¹¹³

On March 13, 1871, the London Straits Agreement on the Black Sea was signed. Under the agreement, the neutrality of the Black Sea was lifted and it was agreed that the Ottoman state's allies would be allowed to sail war vessels through the Straits even in peacetime, subject to permission by the Ottoman sultan. With the agreement, the Ottoman state got rid of most restrictions imposed by the 1841 and 1856 agreements.¹¹⁴

After the Turkish Independence War, the Lausanne Agreement was signed on July 24, 1923. The passage regime through the Turkish Straits was regulated by the Lausanne Straits Agreement, as a supplement to the Lausanne Agreement under Article 23. The Straits were opened to commercial vessels and demilitarized; seizure of foreign war vessels entering the Black Sea in peacetime was limited.¹¹⁵ The fundamental principles of the Lausanne Straits Agreement

¹¹² Rozakis and Stagos, 24.

¹¹³ Rozakis and Stagos, 25, 85.

¹¹⁴ Esmer, 292.

¹¹⁵ Esmer, 293.

are demilitarization of the Straits zone and establishment of a Straits commission, because the Ottoman state was allowed under the London Agreement to open the straits for war vessels of ally countries when necessary for its own security.¹¹⁶

At the 1933 London Disarmament Conference, Turkey first called for modification of the status of the Straits regime, because it included provisions constraining her sovereignty. The Montreux Conference, attended by all states party to the London Convention on Straits except Italy,¹¹⁷ authorized Turkey to fortify the Straits and restricted passage of warships that belong to states that do not border the Black Sea. The convention, today considered a cornerstone of Turkey's sovereignty, was signed on July 20, 1936.

¹¹⁶ Rozakis and Stagos, 93-99.

¹¹⁷ Deluca, 53.

III. THE MONTREUX CONVENTION REGARDING THE REGIME OF THE TURKISH STRAITS

A. INTRODUCTION

The Montreux Convention Regarding the Turkish Straits between Australia, Bulgaria, France, Germany, Greece, Japan, Romania, the dissolved Union of Soviet Socialist Republics, Turkey, the United Kingdom and Yugoslavia, which regulates the legal status of the Canakkale Strait, the Marmara Sea and the Istanbul Strait, was executed on July, 20, 1936 and came into force on November 9, 1936. The Convention was kept open to any state which signed the Lausanne Peace Convention. Italy benefited from this right and participated in the Convention, while Japan waived all rights and interests, signing the Convention on September, 8, 1951.¹¹⁸

The convention's purpose was “to regulate transit and navigation in the Straits of the Dardanelles, the Sea of Marmora and the Bosphorus comprised under the general term Straits in such manner as to safeguard, within the framework of Turkish security and of the security, in the Black Sea, of the riparian states, the principle enshrined in Article 23 of the Treaty of Peace signed at Lausanne on July 24, 1923.”¹¹⁹

The Convention, which supersedes the 1923 Lausanne Convention, consists of 29 articles, four annexes and a protocol.

The Convention is valid for a term of twenty years, until November 9, 1956 (Article 28/1) subject to prior notification by the contracting parties to abolish it

¹¹⁸ Deluca, 36.

¹¹⁹ Convention Regarding the Regime of the Straits signed at Montreux, July 20th, 1936, *American Journal of International Law*, Vol. 31, No. 1, Supplement: Official Documents (Jan. 1937), at <http://www.jstor.org/stable/2213594> accessed December 2008.

(Article 28/3). So far the abolition process has not been initiated. The principle of freedom of transit and navigation in Article 1 of the Convention has an indefinite term (Article 28/2).

Freedom of transit and navigation in the Straits is regulated in the Convention based on discrimination among merchant vessels, vessels of war, and aircraft. Other distinctions are dependent on circumstances: times of peace, when Turkey is not belligerent in time of war, when Turkey is belligerent in time of war, and situations when Turkey considers itself threatened with imminent danger of war.

Consideration of “situation[s] which Turkey considers itself to be threatened with imminent danger of war” is a new regulation not covered in the Lausanne Straits Convention. It allows Turkey to act for preventive self defense. Table 2 shows which articles regulate passage by type of ship and circumstance.

	In Time of Peace	In Time of War		Turkey considers itself threatened with imminent danger of war
		Turkey is not a belligerent	Turkey is a belligerent	
Merchant Vessels	2, 3	4	5	6
Vessels of War	10, 11, 12, 13, 14, 15, 16, 17, 18	19	20	21
Aircraft	23			

Table 2. Discrimination of the Montreux Convention Articles

B. MERCHANT VESSELS

No clear definition is given for merchant vessels in the Montreux Convention. Article 7 considers all ships not covered by Section II (Articles 8-22) as “vessels of war” to be merchant vessels, including state ships when used for commercial purposes.

1. In Time of Peace

In peacetime, merchant vessels benefit from complete freedom of transit and navigation in the Straits day and night without regard to their flags and the loads they carry and without being subject to any procedure except for medical inspections regulated by Turkish laws pursuant to international health rules. Each ship which enters the Straits from Aegean or Black Sea must stop at a health station close to the Straits entry. An inspection is conducted. Ships with a clear medical certificate or a medical statement confirming that there is no contagious and epidemic disease in the ship are not stopped other than during their passage from the Straits.

While in transit without stopping at any harbor of the Straits, ships do not pay tax or charges other than taxes and charges authorized in Appendix I to the Convention (Articles 2/1, 3/1). Taxes and charges provided in Appendix I are based on “Francs gold.” Taxes or charges collected in consideration of services are calculated over registered net tonnage of the ship.

Pilotage (guidance) and towage are optional. If an agency of the merchant vessels or the captain demand these services, and they are furnished by Turkish authorities, charges are collected; the amounts are published periodically by the Turkish government (Appendix I Article 5).

2. In Time of War, Turkey not being Belligerent

As per Article 4, if Turkey is not a belligerent in a war, merchant vessels benefit from the freedom of transit and navigation in the Straits under the conditions provided for in time of peace without regard to their flags and loads. Pilotage and towage are optional.

3. In Time of War, Turkey being Belligerent

If Turkey is a belligerent in a war, merchant vessels which belong to a state at war with Turkey may not pass through the Straits. Merchant vessels pertaining to non-party states have freedom of transit and navigation in the straits provided that they not assist in any way any state (enemy) at war with Turkey.

Both this condition and the rights of Turkey arising from law of war as a belligerent state give Turkey the right to control loads carried by passing ships and to capture and seize contraband commodities. In such cases, ships must enter the straits during daytime and transit by the route determined by Turkish authorities (Article 5).

4. Situation in which Turkey Considers Itself Threatened with Imminent Danger of War

If Turkey considers itself facing imminent war, merchant vessels may pass through the Straits as in peacetime, but ships must enter the straits in daytime and follow the routes specified by Turkish authorities. Pilotage may be made obligatory but are subject to charge (Article 6).

C. VESSELS OF WAR

Provisions of the Convention applicable to vessels of war (Articles 9-22) must be examined in light of definitions in Appendix II for determining ships' tonnages, classes and characteristics (Article 8).

1. In Time of Peace

The safety of Turkey and the states on the Black Sea coast allows for some limitations on passage through the Straits and foreign naval forces in the Black Sea.

a. Limitation Regarding Passage through the Turkish Straits

The Convention does not grant every class of “vessels of war” the right of passage. Article 10 says that light surface vessels, minor war vessels and auxiliary vessels have freedom of transit without tax and charge whether or not they are connected to states on the Black Sea coast and irrespective of their flags if they enter the Straits in peacetime.

Vessels of war may enter the Straits in daytime. During passage, commander of the naval force is obligated to notify a signal station at the entrances of the Canakkale and Istanbul Straits of the full composition of the force under his command without being obliged to stop (Articles 10, 13).

Vessels of war passing through the straits must not use any aircraft they may carry (Article 15).

To pass through the Straits in times of peace, vessels of war must give prior notification to the Turkish government through the diplomatic channel. The normal term for prior notification is eight days, which may be increased to fifteen days for states not on the Black Sea coast. The prior notification should specify the ships' destination, name, type, number and passage dates for coming and going. Each date change is subject to advance notification of three days. The Straits must be entered within a period of five days from the date which is specified in the advance notification, or new advance notice must be given, subject to the same conditions (Article 13).

Tonnages and numbers of vessels of war are also limited in accordance with Article 14, which specifies,

maximum aggregate tonnage of all foreign naval forces which may be in course of transit through the Straits shall not exceed 15,000 tons, and these forces will not include more than nine ships. ... Vessels, visiting a harbor in the Straits and vessels of war which have been damaged during passage shall not be included in this tonnage.

Article 14 also specifies that during repair, damaged vessels are subject to special safety provisions published by Turkey.

The conditions and limitations related to tonnage and the class of ships do not apply to the transit of vessels of war of the states on the coast of the Black Sea. States on the coast of the Black Sea may pass through the Straits by their vessels of war with higher tonnage as long as they are accompanied by no more than two destroyers (Articles 10, 11). Vessels of war are defined in Appendix II to the Convention.

States on the coast of the Black Sea have a right to move submarines they have produced or purchased abroad from the Straits to their naval bases after timely notification of Turkey. The states have a right to move their submarines from the Straits for dockyard repairs, also with timely notice to Turkey. Submarines must sail afloat and during daytime, and move through the Straits alone (Article 12).

Naval forces of any tonnage or composition may make courtesy visits to a harbor in the Straits for a limited time to call upon the Turkish government (Article 17).

b. Limitation in Respect of the Black Sea

As per Article 10 of the Convention, only light surface vessels, minor war vessels and auxiliary vessels of the states which are not on the coast of the Black Sea may pass through the Straits to the north and sail to the Black

Sea in a period of peace. No other class of ships, for example submarines and aircraft carriers, may pass to the Black Sea. Article 18 of the Convention also imposes some limitations in terms of tonnage and time other than these general limitations.

(1) Aggregate Tonnage: Total tonnage for vessels of states not on the coast of the Black Sea in the period of peace must not exceed 30,000 tons (Article 18/1.a). However, if at any time, the tonnage of the strongest navy of the Black Sea exceeds the strongest navy's tonnage in this sea as of signing date of the Convention, the maximum tonnage of 30,000 tons will increase to a maximum of 45,000 tons (Article 18/1.b). The USSR had a navy of 60,000 tons in November, 1936, the effective date of the Convention.¹²⁰ In January 1992, at about the time of its dissolution, the former Soviet Union had a 105,000 ton navy in the Black Sea.¹²¹ Because of the increase from 60,000 to 105,000 tons, the current aggregate tonnage in the Black Sea is 45,000 tons, compared to the 30,000 tons when the Convention was signed.

Tonnage which may be on the sea by any state which is not on the coast of the Black Sea is limited to two-thirds of total tonnage (Article 18/1.c). States on the coast of the Black Sea must communicate the tonnage of their navy at the Black Sea to the Turkish government on the first days of January and July every year. The Turkish government will deliver the information to the contracting parties (Article 18/1.b).

The Convention provides an exception for the tonnage limitation. States which are not on the coast of the Black Sea may send a naval force not exceeding total 8,000 tons for humanitarian purposes without advance notification. If the currently valid total tonnage of 45,000 tons is not met, the Turkish government must permit passage of the humanitarian vessels.

¹²⁰ Sevin Toluner, *Boğazlardan Geçiş Güvenliği ve Montreux Sözleşmesi (Safety for Passage through the Straits and the Montreux Convention Regarding Turkish Straits)*. (Istanbul: Istanbul University Press, 1994), 33.

¹²¹ Toluner, 34.

If the total tonnage is exceeded due to passages or this tonnage would be exceeded by the forces proposed to be sent, Turkish government will promptly inform the states on the coast of the Black Sea about the permission request. If these states do not object within 24 hours, the Turkish government will advise the states concerned of its decision within 48 hours. Each passage to the Black Sea of naval forces of the noncoastal states will be made within the limits of total available tonnage (45,000 tons) (Article 18/1.d).

(2) Duration of Stay for the Vessels of War belonging to non-Black Sea Powers: Vessels of war belonging to non-Black Sea powers may not stay on the Black Sea more than 21 days (Article 18/2).

The Turkish government is obligated to collect statistics about passage through the Straits and the Black Sea, provide necessary information, and supervise execution of each provision regarding passage of vessels of war from the Straits.

The Montreux Convention is based on concern for the security of Turkey and states on the coast of the Black Sea. Therefore, when Turkey, the only supervisor of the provisions regarding passage through the Straits and the Black Sea, is given advance notification above specified amounts, Turkey has a right to respond in accordance with provisions of the Convention. It may never implement a special application under conditions other than those provided for by the Convention.

2. In Time of War, Turkey not Being Belligerent

If Turkey is not a belligerent in a period of war, war ships of non-belligerent states have freedom of transit and navigation in the Straits under the conditions provided for the period of peace (Article 19/1).

Passage of warships of any belligerent state through the Straits is prohibited. However, warships of any belligerent state that have already left their bases and harbors at the beginning of the war have a right to pass through the

Straits to return to their harbors (Article 19/2, 4). These vessels are prohibited from exercising capture and seizure rights granted to the belligerent states by the law of sea warfare and inspection rights, and from performing other hostile acts in passage (Article 19/5).

The Montreux Convention provides two exceptions to the rule of closing the straits to belligerent states' vessels of war.

a. *Fulfillment of Rights and Obligations Arising from the Covenant of the League of Nations*

The Convention allowed warships participating in a joint act under League of Nations authorization to traverse the Straits (Article 19/2, 25). Since the League of Nations was dissolved in 1946 and had no subrogation with the United Nations, this provision could not be applied.

However, all states party to the Montreux Convention are also party to the United Nations Charter. Under Article 25 of the United Nations Charter, UN members assume responsibility for assisting in measures agreed by the Security Council under the applications (Article 39-51) in Part VII of the Charter, "Action with Respect to Threats to the Peace, Breaches of the Peace and Acts of Aggression."¹²² Therefore, war ships of a belligerent state may pass through the Straits to perform compulsory measures undertaken by the Security Council. This is an exception to the principle of keeping the Straits closed to warships of the belligerent states.¹²³ In addition, the UN Charter specifies that responsibilities under the UN Charter prevail over responsibilities arising from any other covenant (Article 103). According to Inan, therefore, even without such a provision

¹²² Charter of the United Nations, at <http://www.un.org/aboutun/charter/> accessed March 2009.

¹²³ Sevinc Toluner, *Milletlerarası Hukuk Dersleri (International Law Lectures)* (Istanbul: Beta, 1996), 176.

in the Montreux Convention, warships of UN member states would be allowed to pass through the straits in order to perform compulsory measures undertaken by the UN Security Council.¹²⁴

b. Passage by Warships of any Combatant State which is a Party to Mutual Assistance Covenant Binding Turkey

As per a mutual assistance covenant binding Turkey concluded within the framework of a Pact of the League of Nations and registered with the Secretariat and published as per provisions of Article 18 of the Pact, the Convention provided passage through straits by warships of any belligerent state which is a party to the mutual assistance covenant in order to assist a state which is attacked (Article 17/2). As noted above, since the League of Nations expired legally and Turkey was not party to such a covenant during the period of the League, it is not possible to apply this exception today.

3. In Time of War, Turkey Being Belligerent

In time of war, if Turkey is a belligerent, the Turkish government may act freely regarding passage of vessels of war (Article 20). In other words, in wars in which Turkey is a belligerent, decision about passage through the Straits by vessels of war pertaining to foreign states is left to the discretion of the Turkish government.

In the event Turkey is a belligerent, the procedure provided for vessels of war in respect to the Black Sea (Article 18) do not apply, nor do provisions of the Convention regulating passage through the Straits by vessels of war in the period of peace (Article 8-17).

¹²⁴ Yüksel Inan, *Türk Boğazları'nın Siyasal ve Hukuksal Rejimi*. (Ankara: Turhan, 1995), 29.

4. Situation in which Turkey Considers Itself Threatened with Imminent Danger of War

If Turkey sees itself under an imminent threat of war, the procedure provided for a period of war in which Turkey is belligerent applies (Article 21/1). Vessels of war that have left their current bases and harbors are permitted to return to their bases and harbors before the application by Turkey of this authority granted by the Convention.

However, Turkey has a right to prevent vessels of war of the state which expose Turkey to the imminent threat of war from benefiting from this right (Article 21/2). In other words, Turkey has a discretionary right to forbid vessels of war of the states that put Turkey in imminent danger from passing through the Straits to return their bases and harbors. Under such circumstances, Turkey is obliged under the Convention to inform high contracting parties and Secretary-General of the League of Nations (Article 21/3). If the Council of the League of Nations decided by a two-thirds majority that Turkey's actions were fair and a majority of parties to the Convention agree, the Turkish government is obligated to desist (Article 21/4).

The League of Nations has no practical value in terms of current international relationships. The United Nations was established in lieu of the League of Nations but independent of it. The UN is not a continuance of the League of Nations, and there is no functional link between them. However, the UN assumed the assets, archives, buildings and nonpolitical technical functions of the League of Nations.

It is generally accepted that political functions given to the League of Nations to be performed via various covenants and agreements (in this context, applicable provisions of Article 21 of the Montreux Convention) may be assumed by the UN—not automatically, but upon request, following relevant resolutions

made by the General Assembly or the body concerned.¹²⁵ In short, paragraphs 3 and 4 of Article 21 of the Montreux Convention have practical application today. This does not mean that Turkey has unlimited discretionary power in this regard. Turkey's manner of exercising its discretionary rights may be discussed by other contracting states in accordance with normal international procedures.¹²⁶

D. AIRCRAFT

Article 23 of the Convention regulates aircraft. Civil aircraft are permitted to pass over the Straits between the Mediterranean and Black Sea. The Turkish government indicates the air routes allocated for passage and specifies forbidden zones of the straits. Civilian aircraft may pass, giving the Turkish government three days prior notification for non-scheduled flights and a general prior notification specifying passage dates for scheduled flights. The Turkish government provides facilities necessary for safe passage of civilian aircraft permitted to fly from the airspace between Europe and Asia as per its national legislation.

Unlike the Lausanne Convention, the Montreux Convention does not accept the principle of freedom of air transit and regulates only transit by civil aircraft over the Straits. In other words, authorization for military aircraft to fly over the Straits is left to the government of the Republic of Turkey.

¹²⁵ Gündüz Aybay, "Türk Boğazlarındaki Seyir Kuralları (Passage Regime in the Turkish Straits)" *Turkish Maritime News*, November 11, 2004 at http://www.denizhaber.com/pop/print.php?tip=yazi&yz_id=31&id=40&okundu=10443 accessed February 2009.

¹²⁶ Toluner, 177-8.

IV. RECENT DEVELOPMENTS REGARDING THE TURKISH STRAITS AFTER THE SOUTH OSSETIA WAR

A. THE SOUTH OSSETIA WAR

The Turkish Straits attracted attention after the South Ossetia War. In August 2008, tension in the Caucasus escalated again. After a long conflict, Georgian troops attacked separatist forces in South Ossetia. Russia was quick to respond to Tblisi's military operation against the separatist South Ossetia region. After more than a week of hostilities, the two sides signed a French-brokered peace agreement.¹²⁷

At the same time, military ships from the Spanish, German, Polish and U.S. navies sailed through the Straits as part of a NATO exercise, consistent with notification to Turkey under the Montreux Convention. Also, U.S. warships attempted to enter the Black Sea to provide humanitarian aid to Georgia.¹²⁸ This time, the tension between Russia and the United States greatly escalated.

Tensions in the region had inevitable consequences for Turkey. Caught between Russia, a neighbor and major economic partner, and the U.S., a superpower and traditional ally, Turkey faced with "major war risk."¹²⁹

B. THE AFTERMATH OF THE SOUTH OSSETIA WAR AND THE CURRENT SITUATION

After the South Ossetia War, the United States began communicating with Turkey to arrange passage of humanitarian aid to Georgia.¹³⁰ Pentagon

¹²⁷ Soner Cagatay, "The Caucasus: Small war, big damage," *Turkish Daily News*, September 8, 2008, <http://www.turkishdailynews.com.tr/article.php?enewsid=114703> accessed December 2008.

¹²⁸ "NATO ships complete Black Sea operation," *Turkish Daily News*, September 12, 2008, <http://www.turkishdailynews.com.tr/article.php?enewsid=115068> accessed December 2008.

¹²⁹ Zeynep Gurcanli, "Caucasia conflict creates opportunity," *Hurriyet News*, September 2, 2008, <http://www.hurriyet.com.tr/english/world/9758495.asp> accessed December 2008.

spokesman Bryan Whitman reported, "The State Department is working at the necessary agreements to achieve some passage in the Straits of Turkey and things like that" and "Surface vessels give us the capability to provide larger amounts of relief supplies and they also give you the platform to operate off aerial assets, vertical lifts, those types of things."¹³¹

Gen. James Cartwright, Vice Chairman of the U.S. Joint Chiefs of Staff, said that the United States planned to send two hospital ships, the USNS Mercy and the USNS Comfort, to Georgia for humanitarian aid. According to official U.S. data, the combined tonnage of the two ships exceeded 69,000 tons, making them ineligible for passage to the Black Sea. Meanwhile, Russia said, "the United States demand to use the Straits to send two hospital ships carrying aid to Georgia is an apparent move that would violate the Montreux Convention."¹³²

As noted above, the Montreux Convention specifies that the number of naval ships from states other than those on the Black Sea coast cannot exceed nine at any given time. In addition, the total displacement of the military ships cannot exceed 45,000 tons. Turkey denied passage through the Black Sea to the two ships, saying, "[R]equests for naval transport of such materials will be evaluated under the Montreux Convention's provisions."

These decisions gave the impression in the United States that "Turkey was not helpful."¹³³ For instance, Congressman Mark Kirk, Illinois Republican member of the House Appropriations Committee's Foreign Operations Subcommittee and a Navy reserve officer, said,

As hundreds of Georgian civilians cry out for international assistance, Turkey is dragging its feet on approving the transit of U.S. hospital ships through the Turkish Straits. Blocking

¹³⁰ Umit Enginsoy, "U.S. in talks with Turkey for Straits passage of its naval vessels," *Turkish Daily News*, August 20, 2008, <http://www.turkishdailynews.com.tr/article.php?enewsid=113020> accessed December 2008.

¹³¹ Enginsoy.

¹³² Enginsoy.

¹³³ Enginsoy.

humanitarian and medical supplies from reaching the people of Georgia is unacceptable. We should expect more from a NATO ally like Turkey.¹³⁴

Ariel Cohen, a Russian expert at the Heritage Foundation, a conservative American think tank, also criticized Turkey:

Turkey is our NATO ally and, as a friend of Georgia, in my view, should have been more supportive of their Georgian neighbors and of their American allies, and this brings back the bad taste of Turkey, for example, barring American troops from going into Iraq through Turkish ports and Turkish territory in 2003—a step that vastly damaged the Turkish- American relations. I'd hoped we were putting that behind us.¹³⁵

In the end, Turkey did not allow passage of the two U.S. naval vessels in excess of the weight limit defined in the Convention, instead allowing three lighter warships to pass through the Straits.

Meanwhile, Russia said that the U.S. ships should remain in the Black Sea for only 21 days in accordance with the Montreux Convention, and warned that Turkey would be responsible if the ships did not leave within the specified time.¹³⁶

Russia's deputy military chief Anatoly Nogovitsyn said,

[T]he NATO warships' entrance to the Black Sea is a serious threat to our security. Under the Montreux Convention, signed in 1936 on the status of the Turkish Straits, the warships can only stay in the Black Sea for 21 days. If the NATO ships continue to stay in the Black Sea after the expiration of 21-day period, then I would like to remind you that Turkey would be responsible. The U.S. ships are carrying nuclear missiles that can hit Russian targets as far away as St. Petersburg.¹³⁷

¹³⁴ Enginsoy.

¹³⁵ Enginsoy.

¹³⁶ "Russia warns Turkey on U.S. ships in Black Sea," *Hurriyet News*, September 5, 2008, <http://www.hurriyet.com.tr/english/home/9766567.asp?gid=244&sz=39418> accessed December 2008.

¹³⁷ "Russia warns Turkey on U.S. ships in Black Sea."

Russia currently wants full compliance with the Montreux Convention. Vladimir Ivanovsky, the ambassador to Ankara, said,

Russia and Turkey have one hundred percent the same approach on the Montreux Convention. We believe that this agreement complies with the needs of the today's world. Both countries support the full implementation of the Montreux Convention.¹³⁸

Similarly, at a press conference in Ankara, U.S. Joint Chiefs of Staff Chairman Admiral Michael Mullen said, "The U.S. warships delivering humanitarian aid for Georgia have abided by the 1936 Montreux Convention." He noted that the U.S. has not demanded a change in the convention.¹³⁹

The South Ossetia War proves that the Turkish Straits remain militarily and strategically of vital importance. This unexpected war demonstrates how the Montreux Convention achieves balance in the Black Sea region. For instance, during the South Ossetia War, if more NATO or U.S. warships, aircraft carriers or submarines had entered the Black Sea, it might have caused a conflict or even a war between the major powers.

¹³⁸ "Russia calls full compliance to Montreux Convention." *Hurriyet News*, September 2, 2008, <http://www.hurriyet.com.tr/english/world/9759360.asp> accessed December 2008.

¹³⁹ Anatolian Agency, "Mullen says U.S. abides by Montreux Convention," September 15, 2008, <http://arama.hurriyet.com.tr/arsivnews.aspx?id=9903695> accessed December 2008.

V. POSSIBLE PROPOSALS FOR MODIFYING THE MONTREUX CONVENTION

A. CHANGES LIKELY TO OCCUR IN THE LEGAL STATUS OF THE TURKISH STRAITS

Procedures for abolishing the Convention are specified in Article 28. The term of the Convention was set as twenty years from the effective date of November, 9, 1936. However, this twenty year term does not mean that the Convention would be abolished automatically after this term. The Montreux Convention stays in force unless it is abolished. Any contracting state could have given prior notice to abolish the Convention two years before the end of the twenty-year term. Although abolishing or renewing the Convention was discussed frequently by the U.S., England and the USSR during and immediately after World War II, the Convention was not abolished at the end of its effective term.

The Convention may also be abolished two years after any state desiring to exercise this right delivers a “notice of denunciation” to the French government, the consignatory state. If any contracting state initiates this process, the Convention remains in force for two years; it will be deemed abolished after that time. The French government is responsible for advising the contracting states if it receives such notice.

If the Convention is abolished, the contracting states agree to participate in a conference to determine provisions of a new Convention. A new convention may be concluded as a result of such a conference or the conference may be completed without producing a convention.

B. REPLACING THE MONTREUX CONVENTION WITH A NEW AGREEMENT

If a new convention is convened to identify the regime for passage through the Turkish Straits, the principle of free transit and navigation will be operative. It is likely that the attitude of the U.S. would hold sway at any such conference. The U.S. is known to oppose all limitations on surface, underwater and air passage for international transport in the Turkish Straits. The U.S. is not likely to adopt a solution in conflict with its own argument in such a conference.¹⁴⁰

In the Montreux Convention, the international transport passage regime through the Straits is "harmless passage." The regime provided by UNCLOS for such straits (those not regulated by a special convention) is "transit passage." Compared with the "harmless passage" regime, "transit passage" is more flexible. It restricts the powers of riparian states and prioritizes the interests of international sea transportation, namely the principles of freedom and consistency.¹⁴¹

Even if the U.S. was not represented at a conference held immediately after the abolition of the Convention, new NATO members Romania and Bulgaria, and NATO candidate members Ukraine and Georgia, would support the arguments of the U.S. Their views might conflict with the interests of Russia regarding the Black Sea. On the other hand, Turkey would request some limitations on passage through the Straits, especially by commercial ships carrying hazardous cargo, as well as new regulations to grant Turkey larger authorities in the Convention. In this case, the interests of Turkey and Russia differ greatly.

¹⁴⁰ Sevin Toluner, *Boğazlardan Geçiş Güvenliği ve Montreux Sözleşmesi (Safety for Passage from the Straits and the Montreux Convention)* (Istanbul: Istanbul University Press, 1994), 14.

¹⁴¹ Sevin Toluner, *Boğazlardan Geçiş ve Türkiye'nin Yetkileri (Passage from the Straits and Authorities of Turkey)* (Istanbul: Istanbul University Press, 1994), 54.

At this point, it is necessary to specify the concerns of Turkey as outlined by the Turkish Ministry of Foreign Affairs.¹⁴² Since the signing of the Montreux Convention, the number of vessels passing through the Straits has increased by a factor of eleven, while total tonnage has increased more than 25 times. The number of ships passing through the Straits increased from 4,500 in 1938 to 56,606 in 2007.

YEAR	Istanbul Strait		Çanakkale Strait	
	Total Passages	Daily Average	Total Passages	Daily Average
1995	46,954	129	35,460	97
1996	49,952	137	35,487	97
1997	50,942	140	36,543	100
1998	49,304	135	38,777	106
1999	47,906	131	40,582	111
2000	48,079	132	41,561	114
2001	42,637	117	39,249	108
2002	47,283	130	42,669	117
2003	46,939	129	42,648	117
2004	54,564	149	48,421	133
2005	54,794	150	49,077	134
2006	54,880	150	48,915	134
2007	56,606	155	49,913	137
2008	54,396	149	48,978	134

Table 3. Vessel Traffic in the Turkish Straits¹⁴³

In recent years, the size of vessels and the nature of cargoes have also changed drastically. The ratio of oil, oil products and other dangerous and hazardous materials transported by large tankers is rapidly increasing. The

¹⁴² "The Turkish Straits," Republic of Turkey Ministry of Foreign Affairs official Web site, <http://www.mfa.gov.tr/the-turkish-straits.en.mfa> accessed December 2008.

¹⁴³ Turkish Undersecretariat for Maritime Affairs Official Website, at <http://www.denizcilik.gov.tr/tr/istatistik/istatistik.asp> accessed March 2009.

number of oil tankers and other dangerous cargo vessels passing through the Strait of Istanbul rose by 90 percent between 1996 and 2007, from 4,248 to 10,054. Similarly, the amount of hazardous cargo increased from 60.1 million tons in 1996 to 143.9 million tons in 2007, an increase of 130 percent.

Years	The Istanbul Strait		The Canakkale Strait	
	Number of Tankers Carrying Hazardous Cargo	Amount of Hazardous Cargo (Million Tons)	Number of Tankers Carrying Hazardous Cargo	Amount of Hazardous Cargo (Million Tons)
1996	4,248	60,118,953	5,657	79,810,052
1997	4,303	63,017,194	6,043	80,458,711
1998	5,142	68,573,523	6,546	81,974,831
1999	5,504	81,505,453	7,266	95,932,049
2000	6,093	91,045,040	7,529	102,570,322
2001	6,516	101,000,000	7,064	109,000,000
2002	7,427	122,953,338	7,627	130,866,598
2003	8,097	134,603,741	8,114	145,154,920
2004	9,399	143,448,164	9,016	155,561,833
2005	10,027	143,565,196	8,813	148,951,326
2006	10,153	143,452,401	9,567	152,725,702
2007	10,054	143,939,432	9,271	149,320,062
2008	9,303	140,357,231	8,758	149,052,174

Table 4. Tanker Traffic in the Turkish Straits¹⁴⁴

The vast growth in the number of vessels and the amount of hazardous cargo in recent years considerably increases the risk of maritime disasters in the Turkish Straits with possible grave consequences for the surrounding human and marine environment. Numerous tragic accidents in the past are evidence in this regard.

¹⁴⁴ Source: Ministry of Foreign Affairs of the Republic of Turkey, at <http://www.mfa.gov.tr/the-turkish-straits.en.mfa> accessed March 2009.

MAIN SEARCH AND RESCUE COORDINATION CENTER MARITIME INCIDENT AND CASUALTY TABLE					
YEAR	INCIDENTS	DEAD	INJURED	LOST	RECOVERED
1999	126	18	18	21	170
2000	117	46	31	19	16
2001	131	25	5	22	570
2002	93	21	2	13	523
2003	115	15	4	7	173
2004	151	22	4	32	1,586
2005	147	24	-	17	405
2006	116	8	-	12	124
2007	117	18	3	-	245
Total	1,113	197	67	143	3,912

Table 5. Maritime Incidents and Casualties in the Turkish Straits¹⁴⁵

Today, all countries including Russia know that the Turkish Straits can no longer manage this load. An environmental disaster in the Turkish Straits would irreparably harm Istanbul, a UNESCO World Heritage site. It is estimated that in Istanbul, with a population of thirteen million, nearly five million would die from an LPG tanker explosion.

The Turkish Straits connecting the Black Sea to the high seas serves as a vital passage for oil tankers. In 2006, the leaders of Russia, Bulgaria and Greece signed an agreement to build a one billion dollar pipeline to bypass the Turkish Straits and carry Russian and central Asian oil directly to the Mediterranean at the Greek port of Alexandroupolis. (Figure 2) Energy analysts say there is an economic reason why such a bypass has not yet been built, and no one is convinced the pipeline will ever be built.¹⁴⁶

¹⁴⁵ Turkish Undersecretariat for Maritime Affairs Official Website, at <http://www.denizcilik.gov.tr/tr/istatistik/istatistik.asp> accessed March 2009.

¹⁴⁶ Barry Wood, "Pipeline Plan to Bypass Bosphorus Has Doubters," Voice of America, 11 October 2007, at <http://www.voanews.com/english/archive/2007-10/2007-10-11-voa22.cfm> accessed March 2009.



Figure 2. Planned Pipeline Route to Bypass the Turkish Straits¹⁴⁷

In an atmosphere in which interests conflict, agreement on a new convention appears impossible. Two main options might be at issue in a new convention.

1. A new convention may include more restrictive provisions than the Montreux Convention, especially for war and merchant vessels of foreign countries.
2. A new convention may include more freedom for war and merchant vessels.

Given current international conventions on the law of the sea, the first option is almost impossible. The chances of the second option are greater.

C. ABOLITION OF THE MONTREUX CONVENTION WITHOUT CONCLUDING A NEW AGREEMENT

In the event of the abolition of the Montreux Convention and a failure to conclude a new convention, there might be various initiatives to apply the “transit passage regime” described in the UNCLOS provisions for “The Straits Used in International Transport.” However, if the Montreux Convention were abolished, the “principle of freedom of transit and navigation” arising from common law and

¹⁴⁷ Source: *Voice of America*, 11 October 2007, at <http://www.voanews.com/english/archive/2007-10/2007-10-11-voa22.cfm> accessed March 2009.

Article 1 of the Convention would remain in force (Article 28/2). Furthermore, as noted by the International Court of Justice in a decision regarding the Corfu Strait, freedom of transit and navigation in the Straits has the nature of custom.¹⁴⁸

All ships, whether warships, state ships or merchant ships, benefit from this right. Consequently, if the convention disappears and no regulation is made, the "transit passage" regime would remain valid in the Turkish Straits region. The belief that Turkey would have authority to arrange passage through the Straits however it wanted if the Convention was abolished is based on an incorrect assumption.

If the Convention expired without a new instrument, a dispute might occur over the issue of a strait that combines two open seas. The question of whether to agree to a regime of "harmless passage" or of "transit passage" would be discussed as well. If the existence of a strait that combines two open sea areas prevails, as defined in UNCLOS, and if the "transit passage" regime were adopted, a freer passage regime would be applied in the Turkish Straits. In such a case, Turkey should argue that passage through the Straits must be within the framework of a "harmless passage" regime. However, this argument might face serious opposition by those claiming that because the transit passage regime has become a common law rule and is generally recognized, it should be applied in the Turkish Straits region as well.

The Marmara Sea is an internal sea, all coasts of which belong to Turkey. If the Istanbul and Canakkale Straits did not exist, the Marmara Sea would be a Turkish lake. In this case, the major question would be, Are the Turkish Straits a single strait connecting two open seas, or are they two separate straits

¹⁴⁸ Unlu, 18-19. In that case, court decision was as follows: "It may be asked whether the test is to be found in the volume of traffic passing through the strait or in its greater or lesser importance for international navigation. But, in the opinion of the Court, the decisive criterion is rather its geographical situation as connecting two parts of the high seas. Nor can it be decisive that this strait is not a necessary route between two parts of the high seas, but only an alternative passage between the Aegean and the Adriatic Seas. It has nevertheless been a useful route for international maritime traffic."

connecting an open sea and an internal sea? Because the Turkish Straits are the only passage connecting the Black Sea to international waters, the first option would be dominant. Expecting the United States and Black Sea countries such as Russia to accept otherwise would be very optimistic.

D. MODIFYING CERTAIN ARTICLES OF THE MONTREUX CONVENTION

The method for amending one or more provisions of the Montreux Convention Regarding Turkish Straits is regulated in Article 29 of the Convention in detail. As per this article:

1. Each of the contracting states may attempt to propose amendments to one or more provisions at the end of each period of five years starting from enforcement of the Convention.
2. For the purpose of acceptance of amendment requests by the contracting states, if this request;
 - a. is related to the Article 14 which regulates maximum tonnage and number of foreign naval forces which are passing from the straits at the same time and to the Article 18 which regulates total tonnage which may be made available by the states which are not on the coast of the Black Sea and time for staying at this sea in the period of peace, then it must be supported by any other contracting state,
 - b. intends to amend other articles, then it must be supported by two contracting states.
3. Amendment request, which is supported by one or two contracting states, will be advised to each of other contracting states at least three months before expiration of the current period of five years together with its nature and justification.
4. In the event of failure in reaching a solution for amendment proposals by way of diplomacy, contracting states undertook to participate in a conference to be held to discuss the amendment request.
5. Amendment of convention provisions in the conference is subject to unanimous decision of contracting states. However, if amendment request is in connection with Articles 14 and 18, a majority composed by three fourths of contracting states is sufficient for acceptance of the request. This majority is a special majority; three fourths of contracting states, which are on the coast of the Black Sea, including Turkey, must be included in the said majority of three fourths.

Thus, while there is deviation from the classical unanimity principle, Turkey has a “veto” right over amendments to Articles 14 and 18. A privileged status is created for the states on the coast of the Black Sea by the majority vote.

When the Montreux Convention concluded, there were three contracting states on the coast of the Black Sea in addition to Turkey: Bulgaria, Romania and the Union of Soviet Socialist Republics. Affirmative votes by two, along with Turkey, is the required three-fourths majority. A negative vote by one was an obstacle to amending Articles 14 and 18. The number of states on the coast of the Black Sea today has reached six: Turkey, Bulgaria, Romania, Ukraine, the Russian Federation and Georgia.



Figure 3. The Black Sea Countries¹⁴⁹

¹⁴⁹ Source: Institute for Applied Science, at www.iapscience.com/img/Black_Sea_map.png accessed March 2009.

An affirmative vote of five contracting states, including Turkey, is required for the majority specified by the Convention. A negative vote from only one contracting state is not an obstacle to amending Articles 14 and 18. No amendment has yet been made to the Convention applying the procedure in Article 29.

Amendments that might be made to the Montreux Convention by the method explained above include the following.

1. General Composition of the Convention

The Convention should continue to discriminate among merchant vessels, vessels of war and aircraft and discrimination among “in time of peace,” “in time of war,” “Turkey not a belligerent,” “in time of war, Turkey as a belligerent,” and a “situation which Turkey considers itself threatened with imminent danger of war.” Such classifications help balance passage rights of warships and commercial ships and Turkey's sovereignty rights in extraordinary cases.

As a requirement for respecting Turkish sovereignty, the following regulations might be made for peacetime without new regulations in wartime or when Turkey considers itself threatened.

2. Merchant Vessels

The Montreux Convention does not give a clear definition of commercial ships. This definition might be added, although it is not really necessary. However, a separate classification should be created for ships carrying dangerous loads such as petrol or LPG. This would allow new regulations for commercial ships with dangerous loads. Prohibition of passage by such ships is not implied here; the point is to grant Turkey the authority to plan passage times for ships with dangerous cargo.

Today, this case is already provided for by the Straits Regulation adopted by Turkey in 1982. Turkey sent the regulation it prepared to the parties and it was generally accepted despite some objections. For example, according to the regulation, traffic is closed one way during passage by ships with heavy tonnage, and other ships wait in appropriate areas. However, application of this and similar articles is subject to ships' awareness of the regulation and depend upon goodwill. Inclusion of this regulation in the Convention text would not erode passage rights, but make simply make passage safer.

It is important to remember that the narrowest point of the Istanbul Strait is 700 meters and that ships in the strait make thirteen sharp maneuvers including some very sharp rotations of 85 degrees.¹⁵⁰ Passage of a 480-meter-long petrol-bearing tanker is very dangerous, and tankers may well get larger. Therefore, it would be useful to have a size limitation for ships with dangerous loads. This would require persuasion, especially of Russia.

Guidance and towage (in other words, backup) should not be optional, and should be compulsory at least for larger ships and those carrying dangerous loads.

¹⁵⁰ Turkish Straits Vessel Traffic Service (TSVTS) Official Webpage, at http://www.afcan.org/dossiers_techniques/tsvts_gb.html accessed March 2009.

Year	Istanbul Strait			Canakkale Strait		
	Total passages	passages with pilot	%	Total passages	passages with pilot	%
1995	46,954	17,772	37.8	35,459	8,292	23.4
1996	49,952	20,317	40.6	36,198	10,307	28.4
1997	50,942	19,752	38.7	36,543	11,047	30.2
1998	49,304	18,881	38.3	38,777	11,448	29.5
1999	47,906	18,424	38.4	40,582	10,002	24.6
2000	48,078	19,209	39.9	41,561	11,130	26.7
2001	42,637	17,767	41.6	39,249	10,703	27.3
2002	47,283	19,905	42.1	42,669	12,164	28.5
2003	46,939	21,175	45.1	42,648	13,020	20.5
2004	54,564	22,318	40.9	48,021	14,404	29.7
2005	54,794	24,449	45.0	49,077	15,661	32.0
2006 (9 months)	40,988	19,913	49.0	36,609	12,605	34.4

Table 6. Passages with Pilot through the Turkish Straits¹⁵¹

3. Vessels of War

a. Limitation Regarding Passage through the Turkish Straits

The Turkish Straits pass near very large Turkish cities, including Istanbul. More than 30 percent of Turkey's population lives in this region. The biggest industrial zones and navy headquarters are also in the region. So practices accepted in the Montreux Convention and described in Chapter III, like daytime passage by warships, advance notice and rules to be followed during passage should be maintained for the safety of Turkey. Other articles might certainly be modified to reflect current conditions.

¹⁵¹ Turkish Straits Vessel Traffic Service (TSVTS) Official Webpage, at http://www.afcan.org/dossiers_techniques/tsvts_gb.html accessed March 2009.

Tonnages and numbers of warships are limited in accordance with Article 14, which specifies, “maximum total tonnage of all foreign naval forces ... will not exceed 15,000 tons and these forces will not contain more than nine ships.” This article might be adjusted and the total tonnage amount increased to reflect current conditions and current warships.

b. Limitation in Respect of the Black Sea

As per Article 10 of the Convention, in peacetime states not on the Black Sea coast may pass only light surface ships, small warships and auxiliary ships north from the Straits to the Black Sea. Certain other classes of ships, like submarines and aircraft carriers, are not permitted to pass to the Black Sea. It would be appropriate to continue this policy as the Black Sea has been a safe sea for a long time.

An exception might be provided for submarines, considering the increase in the number of NATO member countries. Given such an exception, NATO or U.S. submarines might pass into the Black Sea to participate in military exercises, provided they do not stay longer than a specified time and give prior notice to Turkey and the Black Sea countries.

(1) Aggregate Tonnage: In practice, this figure is now 45,000 tons. As with limitations on passage through the Straits, this figure might also be discussed and increased.

(2) Duration of Stay for the Vessels of War belonging to non-Black Sea Powers: Warships of the non-coastal states may not stay in the Black Sea for more than 21 days, regardless of their reasons (Article 18/2). This article is meaningless in practice. For instance, U.S. warships in the Black Sea now exit the Straits for one day at the end of the 21-day term and reenter the following day. This just increases the traffic load. Along with changes to the total number and tonnages of foreign warships on the Black Sea, there would be no problem in deleting the article related to length of stay.

4. Articles Regarding the League of Nations

All articles related to the League of Nations might be renewed, substituting the current United Nations and UN Security Council for the now-defunct League of Nations. If this were done, warships of states participating in joint actions for military or humanitarian assistance under a Security Council decision might pass through the Turkish Straits without limitation, even if they are ships from belligerent states. As Russia and the U.S. have Security Council veto power, neither would object to this provision.

5. Aircraft

No complaint has been delivered by any state about provisions in Montreux Convention regarding aircraft. Therefore, there is no need to amend these provisions. The Turkish government will continue to provide air corridors allocated for passage and necessary facilities for civilian airplanes. Authority to permit or forbid military planes passage over the Straits should remain with the government of Turkey.

VI. CONCLUSION

A. A GENERAL EVALUATION OF POSSIBLE MODIFICATIONS TO THE MONTREUX CONVENTION

Any of the amendments mentioned above would change the international balance in regard to the Black Sea. There would be winning and losing parties in each case. At present, the Black Sea has four main parties, including two global actors: Russia, the U.S., Turkey and the other Black Sea countries. This chapter presents the advantages and disadvantages to the four parties of possible amendments to the Montreux Convention.

In general, the interests of Russia and the U.S. in regard to the the Black Sea are diametrically opposed, while the interests of the Black Sea countries overlap with U.S. interests. Turkey remains caught between Russia, a good neighbor with strong economic ties, and the United States, its traditional ally. Turkey's interests overlap with Russia's in some respects, and with U.S. interests in other respects.

B. ADVANTAGES AND DISADVANTAGES FOR TURKEY

The conclusion of a new convention would hardly be to Turkey's advantage. However, a new convention with increased sensitivity to the environment would calm anxieties in the Turkish Straits and create a safer passageway. Of course, Turkey cannot prevent passage of commercial ships even if they carry dangerous loads. However, recognition by the convention of the Straits Regulation adopted by Turkey in 1982 would benefit Turkey. In fact, this is Turkey's only desire in regard to the Straits today.

If a new convention were to provide more freedom of passage for both warships and commercial ships, current problems will become more complex for Turkey.

The abolition of the Montreux Convention without the adoption of a new convention is the worst scenario for Turkey. In such a case, there would be no discrimination between warships and commercial ships. It is possible that a "transit passage" regime would be applied instead of the "harmless passage" regime currently applied. Nations not on the Black Sea coast, like the U.S., would likely push for this. The Turkish Straits could not manage the increased traffic. Free passage through the Straits, day and night, by commercial ships (some with dangerous loads) without limitation or regulation would increase the risk of accident and sea pollution in the Straits. Major environmental disasters would be inevitable.

Most importantly, with removal of the limitations on warships, each passage from the Straits to the Black Sea by NATO or U.S. ships would increase tensions and lead to opposition between Turkey and Russia. Turkey would be obliged to allocate more military forces to the Black Sea.

If the Montreux Convention remains in force with amendments to only certain articles, the "harmless passage" regime desired by Turkey would continue. If Turkey's requests in regard to commercial ships are met, risks of an environmental disaster would decrease. Increasing the numbers and staying time for warships on the Black Sea would not cause serious damage to Turkey. However, Turkey thinks that the Black Sea is now safe, and must not become more militarized.

In fact, making specific modifications agreeable to everyone involved without changing the core of the Montreux Convention would be the best option.

C. ADVANTAGES AND DISADVANTAGES FOR THE UNITED STATES

The worst scenario for the U.S. would be concluding a new convention with more limitations, a scenario with a low probability.

In the event of a new convention which is more free than the Montreux Convention, U.S. would be able to have more military assets on the Black Sea but submarine and airplane carriers would still be forbidden from passing through the Black Sea.

In case of termination of the Convention without a new convention, the U.S. would achieve its aim with the Black Sea. It is clear that, upon acceptance by Turkey of a "transit passage" regime, the U.S. would be able to have naval forces on the Black Sea without limitations on type, number, tonnage and time. This would allow the U.S. to develop relations with the new NATO members and especially the candidate countries. Above all, if there were another event like South Ossetia war, its deterrence effect on Russia would be greater and it would be more likely that the U.S. could provide both humanitarian and military assistance to allied nations.

However, it must not be forgotten that increasing U.S. military assets on the Black Sea will always cause problems between Russia and U.S. and adversely affect their relationship.

Amendments to certain articles (discussed below) is the most appropriate solution to the current situation, which disturbs the U.S., and full freedom, which would disturb Russia.

D. ADVANTAGES AND DISADVANTAGES FOR RUSSIA

Russia would likely request that limitations be imposed on foreign warships in a new convention. Otherwise, they would have to accept more American assets on the Black Sea, and Russian influence on currently alienated Black Sea countries and Russian dominance in the region would continue to decline.

Lack of contravention to regulate the passage regime through the Turkish Straits would be disadvantageous for Russia as well as Turkey. This option is the worst scenario for Russia. Russia would not feel secure in the Black Sea and

would choose to increase its naval forces there. Its only advantage is that no limitations would remain on commercial ships, so Russia would be able to market Caspian basin petrol freely to the world in tankers of any type and size.

If Turkey's request for regulation of commercial ships is achieved by amendments to specific articles, Russia would be most affected and would never accept the proposals because Russia would face great problems in marketing Caspian basin petrol. In addition, even if complete freedom for warships is not allowed, making some limitations flexible would also bother Russia.

E. ADVANTAGES AND DISADVANTAGES FOR BLACK SEA COUNTRIES

Two of the six Black Sea countries are NATO members and two of them are candidate countries. It is likely that nations like Bulgaria and Romania would act with the U.S. in concluding a new convention in exchange for certain types of American assistance.

If a new convention were to relax existing limitations or terminate the Montreux Convention without adopting a new convention, these four countries would feel safer against Russia thanks to increased NATO and U.S. presence in the Black Sea. The possibility of a Russian force like that seen in the South Ossetia war would decrease. The process of integrating with the West and NATO by these four nations would accelerate. Furthermore, opportunities for these nations to engage in exercises and training on the Black Sea within the NATO structure would increase, and thus their naval forces would be better trained and modernized.

Black Sea countries would be affected by specific limitations likely to be imposed on commercial ships consistent with Turkey's requests, but not as much as Russia. Except for the limited carrying capacity of the Danube River, these nations' only route to open seas and oceans is through the Turkish Straits.

F. CONCLUSION

Although the Montreux Convention is technically out of date, particularly in regard to the need to update naval vessel classifications and to substitute the authority of the United Nations for the League of Nations, the political balance provided by the convention has served Turkish, Russian and Western interests.

Today's situation regarding the Turkish Straits has both economic and strategic aspects. Economically, there is little disagreement among Turkey and the riparian and non-riparian states. The idea that the Straits should be kept open to ships for commerce without restriction, in time of peace or in time of war, has undoubtedly achieved general acceptance. It has been accepted for the regime of the Straits for the last two centuries.

The change in Turkey's position results from many sea accidents involving commercial vessels with hazardous cargo, some of which have caused sea and air pollution and seriously threatened environmental safety. Accidents at Bosphorus, the route for tanker traffic, could result in serious consequences for the fifteen million people living in Istanbul and others throughout the region. The closure of Bosphorus due to an accident could negatively affect all states that rely on the Turkish Straits, and particularly the Black Sea countries.

Article 2 of the Montreux Convention states, "Pilotage and towage remain optional." In other words, pilotage is not compulsory. Analysis of the accidents in the Turkish Straits reveals that only 7.2 percent of ships involved in accidents were using a maritime pilot.¹⁵² Accordingly, the author of this thesis concludes, first, that Turkey's environmental concerns should be considered in discussions of the Turkish Straits and the Montreux Convention.

¹⁵² Necmettin Akten, "The Montreux Convention and the Black Sea Geopolitics," *Eurasia Critic*, at http://www.eurasiacritic.com/november/hk_montr_conv.html accessed March 2009.

On the strategic side, the Turkish Straits present a triangular configuration involving the strategic exigencies of Turkey, the Black Sea powers and the other powers.¹⁵³ The Montreux Convention has balanced these three sets of interests for 73 years and it still seems the arrangement best suited to the requirements of today.¹⁵⁴

There are two reasons for this. According to the Montreux Convention, the Turkish Straits are open to warships of Black Sea countries in time of peace, but not to warships of other countries except for the aggregate tonnage allowed. This provides security to the Black Sea countries. When Turkey is neutral in wartime, passage of belligerents' warships is prohibited. This is the only way that Turkey can protect itself from involvement in a war. It is clear that allowing passage of warships belonging to belligerents would make the Straits a battlefield.

Therefore, the second conclusion of this thesis is that the current system under the Montreux Convention is ideal for safeguarding the interests and strategic exigencies of all parties: Turkey, the Russian Federation, other Black Sea countries and the Western powers, including the United States. The experience of the South Ossetia War has proved this once again.

To abolish the Convention now would require prior notification by the contracting parties (Article 28/3). Interestingly, despite many demands for modification since 1936, the abolition process has not been initiated. It seems that no one wants the Montreux Convention revised, at least officially. Hence, the third conclusion of this thesis, and the answer to the first part of the key research question, "Is modification of the Montreux Convention necessary?" is "No, modification of the Montreux Convention is not necessary."

Nevertheless, it is clear that every side has demands regarding the passage regime for the Turkish Straits. Russia wants greater restrictions while the United States wants a greater naval presence in the Black Sea. As for

¹⁵³ Esmer, 301.

¹⁵⁴ Esmer, 302.

Turkey, it wants the Straits to be more secure, both environmentally and militarily. Therefore, if some day modifications to the Montreux Convention become necessary, the best option to satisfy all parties and maintain peace in the Black Sea region would be to make specific modifications to be agreed by all parties without changing the core of the Montreux Convention.

THIS PAGE INTENTIONALLY LEFT BLANK

LIST OF REFERENCES

- Akten, Necmettin. "The Montreux Convention and the Black Sea Geopolitics," *Eurasia Critic*, at http://www.eurasiacritic.com/november/hk_montr_conv.html
- American Society of International Law. "Convention Regarding the Regime of the Straits," *American Journal of International Law*, Vol. 31, No. 1, Supplement: Official Documents (Jan. 1937): 10, at <http://www.jstor.org/stable/2213594>
- Anatolian Agency. "Mullen says U.S. abides by Montreux Convention," September 15, 2008, at <http://arama.hurriyet.com.tr/arsivnews.aspx?id=9903695>
- Aybay, Gündüz. "Türk Boğazlarındaki Seyir Kuralları (Passage Regime in the Turkish Straits)" *Turkish Maritime News*, November 11, 2004 at http://www.denizhaber.com/pop/print.php?tip=yazi&yz_id=31&id=40&okundu=10443 accessed February 2009
- Bilsel, Cemil. "The Turkish Straits in the Light of Recent Turkish-Soviet Russian Correspondence," *American Journal of International Law*, Vol. 41, No. 4 (Oct. 1947): 731, at <http://www.jstor.org/stable/2193087>
- Bruel, Erik. "The General Legal Position of International Straits," *International Straits, A Treatise on International Law, Vol. I.*, at <http://www.jstor.org.libproxy.nps.edu/stable/pdfplus/3016974.pdf>
- Cagatay, Soner. "The Caucasus: Small war, big damage," *Turkish Daily News*, September 8, 2008, at <http://www.turkishdailynews.com.tr/article.php?enewsid=114703>
- Charter of the United Nations, at <http://www.un.org/aboutun/charter/>
- Convention Regarding the Regime of the Straits signed at Montreux, July 20th, 1936, *American Journal of International Law*, Vol. 31, No. 1, Supplement: Official Documents (Jan. 1937), at <http://www.jstor.org/stable/2213594>.
- Deluca, Antony R. *Great Power Rivalry at the Turkish Straits: The Montreux Conference and Convention of 1936*. New York: Columbia University Press, 1981.
- Enginsoy, Umit. "U.S. in talks with Turkey for Straits passage of its naval vessels," *Turkish Daily News*, August 20, 2008, at <http://www.turkishdailynews.com.tr/article.php?enewsid=113020>

- Esmer, Ahmed Sukru. "The Straits: Crux of World Politics," *Foreign Affairs*, Vol. 25, No. 2 (Jan. 1947), at <http://www.jstor.org/stable/20030040>
- Garrison, Barbra. "UD Professor Completes Series on World's Straits," *University of Delaware Community Newspaper*, Vol. 17 No. 32, May 21, 1998 at <http://www.udel.edu/PR/UpDate/98/32/ud.html>
- Grotius, Hugo, in the *Stanford Encyclopedia of Philosophy*, at <http://plato.stanford.edu/entries/grotius/>
- Grotius, Hugo. *The Freedom of the Seas, or the Right Which Belongs to the Dutch to take part in the East Indian Trade*, translated by Ralph Van Deman Magoffin (New York: Oxford University Press, 1916), vi. at <http://oll.libertyfund.org/title/552> on 2009-03-03
- Gurcanli, Zeynep. "Caucasia conflict creates opportunity," *Hurriyet News*, September 2, 2008, at <http://www.hurriyet.com.tr/english/world/9758495.asp>
- Howard, Harry N. "The United States and the Problem of the Turkish Straits," *Middle East Journal*, Vol. 1, No.1 (Jan. 1947), at <http://www.jstor.org/stable/4321828>
- Inan, Yüksel. *Türk Boğazları'nın Siyasal ve Hukuksal Rejimi (The Legal Aspect of the Turkish Straits' Regime)*. Ankara: Turhan, 1995.
- Jia, Bing Bing. *The Regime of Straits in International Law*. Oxford: Oxford University Press, 1998.
- Jones, Stephen B. "The Problem of the Turkish Straits by Harry N. Howard," *Geographical Review*, Vol. 37, No. 3 (Jul. 1947): 524, at <http://www.jstor.org/stable/211151>.
- Kanbolat, Hasan. "Montreux Straits Treaty after South Ossetia War: The history of the Turkish Straits," *Today's Zaman*, September 11, 2008, at <http://www.todayszaman.com/tz-web/yazarDetay.do?haberno=150871>
- Ministry of Foreign Affairs of the Republic of Turkey, at <http://www.mfa.gov.tr/the-turkish-straits.en.mfa>
- "Map of the Black Sea Countries," Institute for Applied Science, at www.iapscience.com/img/Black_Sea_map.png
- Moore, Wilfred George. *A Dictionary of Geography*. London: Penguin Press, 1975.

“NATO ships complete Black Sea operation,” *Turkish Daily News*, September 12, 2008, at <http://www.turkishdailynews.com.tr/article.php?enewsid=115068>

Rozakis, Christos L. and Petros N. Stagos. *The Turkish Straits*. Dordrecht: Martinus Nijhoff Press, 1987.

“Russia warns Turkey on U.S. ships in Black Sea,” *Hurriyet News*, September 5, 2008, at <http://www.hurriyet.com.tr/english/home/9766567.asp?gid=244&sz=39418>

Shotwell, James T. and Francis Deak. *Turkey at the Straits: A Short History*, New York: Hesperides Press, 2006.

“The Turkish Straits,” Republic of Turkey Minister of Foreign Affairs official Web site, at <http://www.mfa.gov.tr/the-turkish-straits.en.mfa>

Toluner, Sevin. *Boğazlardan Geçiş Güvenliği ve Montreux Sözleşmesi (Safety for Passage from the Straits and the Montreux Convention)*. Istanbul: Istanbul University Press, 1994.

Toluner, Sevin. *Boğazlardan Geçiş ve Türkiye'nin Yetkileri (Passage from the Straits and Authorities of Turkey)*. Istanbul: Istanbul University Press, 1994.

Toluner, Sevinc. *Milletlerarası Hukuk Dersleri (International Law Lectures)*. Istanbul: Beta, 1996.

Turkish Straits Vessel Traffic Service (TSVTS), at http://www.afcan.org/dossiers_techniques/tsvts_gb.html

Turkish Undersecretariat for Maritime Affairs, at <http://www.denizcilik.gov.tr/tr/istatistik/istatistik.asp>

Turkmen, Ilter. “Montreux Treaty”, *Turkish Daily News*, September 13, 2008, <http://www.turkishdailynews.com.tr/article.php?enewsid=115186>

Unger, Irwin. *These United States*. New York: Prentice Hall, 2007.

United Nations Convention on the Law of the Sea, 10 December 1982.

Unlu, Nihan. *The Legal Regime of the Turkish Straits*. The Hague: Martinus Nijhoff Press, 2002.

Vali, Ferenc A. *The Turkish Straits and NATO*. Stanford: Hoover Institution Press, 1972.

Vervliet, Jeroen. "The value of Hugo Grotius' 'Mare Liberum' in today's world," at <http://www.mareliberum.nu/v1/index.php?mnu=2>

Wilson, Woodrow. "8 January, 1918: President Woodrow Wilson's Fourteen Points" at http://avalon.law.yale.edu/20th_century/wilson14.asp

Wood, Barry. "Pipeline Plan to Bypass Bosphorus Has Doubters," Voice of America, 11 October 2007, at <http://www.voanews.com/english/archive/2007-10/2007-10-11-voa22.cfm>

INITIAL DISTRIBUTION LIST

1. Defense Technical Information Center
Ft. Belvoir, Virginia
2. Dudley Knox Library
Naval Postgraduate School
Monterey, California
3. James Russell
Naval Postgraduate School
Monterey, California
4. Erik Dahl
Naval Postgraduate School
Monterey, California
5. Bulent Gokcicek
Doktrin Sube, Genelkurmay Baskanligi
Ankara, Turkey